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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, January 27, 2009
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR 1400

RIN 0560–AH85

Farm Program Payment Limitation and Payment Eligibility for 2009 and Subsequent Crop, Program, or Fiscal Years

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Commodity Credit Corporation (CCC) is revising regulations as required by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) to make changes in payment eligibility, payment attribution, maximum income limits, and maximum dollar benefit amounts for participants in CCC-funded programs. This interim rule amends the regulations to ensure that program payments and benefits are issued only to those persons and entities that meet all eligibility requirements, that a program participant does not receive any program payment above the maximum allowable benefit amount, and that applicable payments are not made to anyone whose average adjusted gross income exceeds the maximum dollar amounts established by the 2008 Farm Bill. This interim rule will apply to 2009 and subsequent crop, program, or fiscal year benefits for programs subject to the provisions in our regulations.

DATES: *Effective Date:* This rule is effective December 23, 2008.

Comment Date: We will consider comments that we receive by January 28, 2009.

ADDRESSES: We invite you to submit comments on this interim rule. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *E-Mail: Salomon.Ramirez@wdc.usda.gov.*
- *Fax:* (202) 690–2130.
- *Mail:* Salomon Ramirez, Director, Production, Emergencies and Compliance Division, FSA, U.S. Department of Agriculture (USDA), Stop 0517, Room 4752, 1400 Independence Ave., SW., Washington, DC 20250–0517.
- *Hand Delivery or Courier:* Deliver comments to the above address.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Comments may be inspected at the mail address listed above between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this interim rule is available through the Farm Service Agency (FSA) home page at *http://www.fsa.usda.gov/*.

FOR FURTHER INFORMATION CONTACT: Salomon Ramirez, Director, Production, Emergencies and Compliance Division, FSA, USDA, Stop 0517, 1400 Independence Ave., SW., Washington, DC 20250–0517. Telephone: (202) 720–7641. Electronic mail: *Salomon.Ramirez@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

This rule implements provisions in sections 1603 and 1604 of the 2008 Farm Bill (Pub. L. 110–246) concerning payment eligibility and payment limits for participants in CCC-funded programs. The 2008 Farm Bill provides new eligibility requirements based on annual income, sources of income, and type of entity. This rule amends 7 CFR part 1400 to implement these changes.

Applicability of Part 1400

The applicability of part 1400 is amended as required by the 2008 Farm Bill to include new programs authorized by the 2008 Farm Bill. These changes are specified in § 1400.1, ''Applicability.'' All of the amendments made by this rule apply to the 2009 and subsequent crop, program, or fiscal years.

Payment Eligibility—Annual Income and Sources of Income

The 2008 Farm Bill provides that, notwithstanding any other provision of law, a person or legal entity is not eligible to receive commodity program benefits such as direct payments and counter-cyclical payments or Average Crop Revenue Election (ACRE) program payments if the average adjusted gross income (AGI) of the person or legal entity from nonfarm sources exceeds $500,000. Similarly, a person or legal entity is not eligible for direct payments if the average adjusted gross income from farming, ranching, and forestry operations of the person or legal entity exceeds $750,000. A person or legal entity is ineligible for conservation program benefits or payments if the average adjusted gross nonfarm income of the person or legal entity exceeds $1,000,000, unless not less than 66.66 percent of the adjusted gross income of the person or legal entity is derived from farming, ranching, and forestry operations, as determined by the Secretary. As required by the 2008 Farm Bill, this rule provides that with respect to programs administered by FSA the Administrator of FSA may waive the AGI limit for conservation and related program benefits on a case-by-case basis for the protection of environmentally sensitive land or other land of special significance. Similarly, with respect to programs administered by the Natural Resources Conservation Service (NRCS), this rule provides that the Chief of NRCS may issue such a waiver. Specific criteria that must be met for the consideration of the wavier are outlined in this rule.

The AGI limits implemented by this rule replace the prior limit of $2.5 million and the previous exception for those earning 75 percent of their income from farming.

This rule amends § 1400.3, ''Definitions,'' to add definitions for ''Average Adjusted Gross Income,'' ''Average Adjusted Gross Farm Income,'' and ''Average Adjusted Gross Nonfarm Income.'' It also amends subpart F (prior to this rule, subpart G), ''Average Adjusted Gross Income Limitation,'' to implement these AGI limits that are required by the 2008 Farm Bill.

The 2008 Farm Bill AGI requirements for payment eligibility apply to payments from commodity programs

and from all conservation programs that are specified by Title II of the 2008 Farm Bill and Title XII of the Food Security Act of 1985 (Pub. L. 99–198, commonly known as the 1985 Farm Bill). AGI will be calculated based on the average income for the 3 taxable years preceding the most immediately preceding complete taxable year for which benefits are requested. The 3 year average method of determining AGI is unchanged, except that the relevant 3 year period is now the 3 taxable years preceding the most immediately preceding complete taxable year for which benefits are requested, while previously the method used the 3 years prior to the year for which program benefits are requested. The definition of AGI will be based on the Internal Revenue Service definition, which is unchanged.

The definition of income derived from farming, ranching, and forestry operations in § 1400.501, ''Determination of Average Adjusted Gross Income,'' is expanded by this rule to include income from the processing, storing, and transporting of farm, ranch, and forestry commodities; production of farm-based renewable energy; and, in some instances, the provision of production inputs and services to farmers, ranchers, and foresters. These activities were included in the provisions for determining farm income in section 1604 of the 2008 Farm Bill.

Payment Limits for Specific Programs

Subpart A, ''General Provisions,'' § 1400.1, ''Applicability,'' sets payment limits for specific programs. The 2008 Farm Bill provides that the payment limit is $40,000 for the Direct and Counter-cyclical Program (DCP) direct payments and $65,000 for DCP counter-cyclical payments. That is unchanged from the previous limit. The limit of $50,000 for CRP payments is unchanged. The limit of $100,000 for Noninsured Crop Disaster Assistance Program (NAP) payments is unchanged. The limit on Environmental Quality Incentives Program (EQIP) payments is reduced from $450,000 to $300,000 for the term of the program.

This rule adds a limit of $100,000 for Supplemental Revenue Assistance Program (SURE) payments and for Tree Assistance Program (TAP) payments. Total payments from SURE, the Livestock Indemnity Program (LIP), the Livestock Forage Disaster Program (LFP), and the Emergency Assistance Program for Livestock, Honey Bees, and Farm-raised Fish (ELAP) may not exceed $100,000.

This rule removes the limit of $75,000 specifically for the Marketing Assistance Loans (MAL) program gains and Loan Deficiency Payments (LDP) program; there are no longer any limits on payments for MAL and LDP.

As specified in the 2008 Farm Bill, if a person or legal entity is participating in ACRE, the direct payments will be reduced by 20 percent on each farm participating in ACRE. The total limit for counter-cyclical payments and ACRE payments as specified in this rule is $65,000 plus the amount the direct payments were reduced. The 2008 Farm Bill specifies the same limits for peanuts. All the program-specific payment limits are specified in § 1400.1, ''Applicability.''

Payment Limitation—Eligible Persons and Entities

The regulations governing persons and legal entities eligible for payments are in part 1400, subpart B. This rule changes the title of subpart B, ''Person Determinations,'' to ''Payment Limitation'' and makes other changes to the subpart required by the 2008 Farm Bill.

This rule amends the definition of ''person'' and adds a definition of ''legal entity'' in § 1400.3, ''Definitions.'' The 2008 Farm Bill defines ''person'' as a natural person. The definition of person in this rule no longer includes a legal entity or government agency.

This rule removes the sections in subpart B describing various kinds of legal entities that are no longer relevant for the purpose of determining payment limits.

This rule changes the provisions for spouses in regard to separate or combined status for payment limitation purposes. Spouses may still each qualify for a separate payment limitation, but the provisions where husband and wife are considered combined for the purposes of this part are removed. While each spouse may now have their own respective limitation, each must also meet applicable program and payment eligibility requirements to receive program benefits. The rule includes a new provision by which if one spouse is determined to be actively engaged in farming, the other spouse is credited for the purposes of payment eligibility with making significant contributions of active personal labor or active personal management to the farming operation. This is not to be construed as meaning if one spouse qualifies for payment, the other automatically qualifies as well. As previously mentioned, both spouses must make significant and requisite contributions to the farming operation that are commensurate with their claimed shares to be considered actively engaged in farming and eligible for program benefits.

This rule removes both the 3-entity rule for payment limitation purposes and the definition of substantial beneficial interest. A person may now receive program benefits through an unlimited number of entities. The process of determining payment limits for entities no longer requires a designation of substantial beneficial interest. Since substantial beneficial interest only applied to the designation of entities for payment under the 3-entity rule, that term is not necessary and has been removed.

Payment limitation will be determined by direct attribution, taking into account the direct and indirect ownership interests of a person or legal entity that is eligible to receive such payment. The new attribution of payments provisions are in a new § 1400.105, ''Attribution of Payments,'' and a new definition of attribution is added to § 1400.3, ''Definitions.'' Attribution will be tracked through four levels of ownership in legal entities. For the purposes of determining whether a person or legal entity has met the new payment limits, every payment made directly to a person or legal entity will be combined with their pro rata interest in payments received by a legal entity in which the person or legal entity has a direct or indirect ownership interest. Payments made to a legal entity will be attributed directly to persons and limited to the amounts specified in subpart A.

This rule adds a new § 1400.107, ''Notification of Interests,'' which requires each person or legal entity receiving payments to provide the name and taxpayer ID number of each legal entity in which the person or legal entity holds an ownership interest. While this is designated as a new section, this requirement was in effect previous to the 2008 Farm Bill, as part of the eligibility requirements for the now-obsolete 3-entity rule.

Payments made to a joint venture or general partnership will not exceed the payment limit multiplied by the number of persons or legal entities (other than joint ventures and general partnerships) that comprise the direct ownership of the joint venture or general partnership.

Payments issued to a minor child will be attributed to the child's parent who receives the larger amount in program payments compared to the other parent, both directly and indirectly, unless certain conditions are otherwise met.

For the purposes of attribution in § 1400.105, ''Attribution of Payments,'' the payment limitations specified will not apply to marketing cooperatives but

will now apply to the producers or members of those cooperatives as persons.

The 2008 Farm Bill provides that Federal agencies are not eligible for program benefits. Similarly, State and local governments and political subdivisions, and agencies thereof, will no longer be eligible, with an exception for payments earned on State-owned land that is used for the support of public schools. Payments received under this public school support exception are limited to $500,000 annually, unless the State has a population of less than 1.5 million.

This rule amends § 1400.3 by removing the definition of ''Tribal venture.'' This rule also amends § 1400.4 by removing all references to Indian tribal ventures, including the restrictions on payments to such ventures. In this rule, § 1400.4 exempts Indian tribes, as defined in 1400.3, from all requirements of this part. Provisions of this part apply to persons or legal entities. Indian tribes are not included under the definition of person or legal entity as provided by the 2008 Farm Bill for the application of the payment eligibility and payment limitation provisions. The 2008 Farm Bill does not impose any limitations or restrictions on program payments and benefits to Federally recognized Indian tribes. This exemption to the provisions of this part only applies to Indian tribes. The payment eligibility and payment limitation requirements remain applicable to individual American Indians or Alaska Natives receiving program payment and benefits as individuals, or through a group in which all members of the group are American Indians or Alaska Natives.

This rule provides more restrictive payment eligibility requirements than the prior requirements for new persons and legal entities that are added to an existing farming operation. These requirements, referred to as the ''substantive change'' rule, are found in § 1400.104 (previously § 1400.109), ''Changes in Farming Operations.'' These discretionary changes require that any transfer of land or equipment by sale or gifting between existing members and new members must be based on fair market value of the land or equipment, the sale cannot be owner financed, and the former owner of the land or equipment cannot retain any residual control or preferential buyback rights to the land or equipment. This is to ensure that this change or transfer actually occurs other than just on paper. Otherwise, the person or legal entity being added to the farming operation could be obtaining program payments in the absence of making the requisite and significant contributions to the farming operation for eligibility. Furthermore, the farming operation would be gaining another limitation even though no real, meaningful change occurred in the farming operation to justify the additional limitation.

Requirements in the substantive change rule for an addition of persons or legal entities to an existing farming operation can also be met through an addition of land to the existing farming operation. Previously, an increase of cropland operated by the farming operation of at least 20 percent and with a planting history comparable to the area was required. Now the requirement is the addition of base acres in an amount that represents at least a 20 percent increase from the previous year. This 20 percent increase in base acres will now qualify one additional person or legal entity for payment limitation purposes, rather than an unlimited number of additional persons or legal entities. However, additional persons or legal entities beyond one for payment limitation purposes may be recognized if an FSA State Office specialist determines that the increase in base acres was of a magnitude that would support further additions to the farming operation of persons or legal entities for payment limitation purposes.

These revisions to the substantive change rule are being announced prior to the beginning of a crop or program year to afford adequate time for any existing farming operation and its members that are contemplating such operational changes for the coming year to be fully informed of these revisions.

An example of whether a change in farming operations will be considered a ''substantive change'' by this rule would be that Father A has previously conducted an individual farming operation consisting of all owned land. In 2009, Father A expands the operation by forming a three-member general partnership with his now adult children B and C, and with each member having equal shares. No additional acreage is farmed, but Father A has gifted to each child one-third of the owned land. The gifted land is commensurate with individuals' share of the farming operation. Previously, this would be considered a bona fide and substantive change in the farming operation. Through the landowner provision, each person would be considered actively engaged in farming and each would have their own respective payment limitation.

With this interim rule, this would still be considered a substantive change in the farming operation, but proof of the gifting of this land to the children must be provided. The land transfers would most likely be recorded at the Register of Deeds, new deeds would be issued to reflect the current owners of the land, and all parties would have been expected to report the gifts to the Internal Revenue Service (IRS) for tax purposes. Documentation as described would lend support that the substantive change requirements were met.

Another example would be an existing three-member general partnership comprised of a Father B and children D and E. The decision was made to expand the farming operation for 2009 for the inclusion of two newly formed limited liability companies, F and G, each of which are comprised of the individuals, B, D and E. The decision to expand the operation was based on the rental of the neighbor's farm. The increase in base acres held by the general partnership in 2008 and the amount that would be controlled in 2009 was over 50 percent.

Previously, this would be considered a bona fide and substantive change in the farming operation as the addition was of cropland of at least 20 percent. Both of the legal entities would have been recognized in the farming operation for payment limitation purposes. Under the revised regulation, a substantive change will be considered to have occurred in the farming operation with the increase in base acres of at least 20 percent. Under the revised regulation, the bona fide and substantive change which occurred in the farming operation with the increase in base acres of more than 20 percent would initially qualify only one of the legal entities for payment limitation purposes. However, in this example, the increase in base acres was twice the minimum amount required. The partnership would therefore be afforded the opportunity to submit a written request for the increase in one additional person or legal entity to the farming operation. The request would be forwarded to the reviewing authority in the State FSA office designated to consider such cases. Upon review of the supporting documentation provided with the request, a determination would be made and issued accordingly.

The entire subpart D that provided the specifics of the 3-entity rule is removed, and subsequent subparts redesignated. The 2008 Farm Bill eliminated the 3-entity rule. The removal of this subpart means that persons can receive payments based on ownership in an unlimited number of entities, until the payment limits in subpart A are reached. All payments will be traced

through four levels of ownership for direct attribution to persons.

Clarifications Made To Provide Clarity and Enforceability

This interim rule also implements revisions to the existing requirements for payment eligibility and payment limitation. These changes are made to strengthen or clarify existing regulatory provisions while remaining consistent with statutory provisions, to provide consistency in determinations, and to simplify the administration of the payment eligibility and payment limitation provisions.

This rule amends § 1400.2, ''Administration,'' to clarify that eligibility determinations will be made within 60 days after the supporting documentation is received in the county office.

This rule amends § 1400.502 (redesignated, previously § 1400.602), ''Compliance and Enforcement,'' to require that persons and legal entities provide detailed supporting documentation on AGI each year to CCC. Previously, the regulation required this compliance information only when specifically required by CCC. Similarly, this rule amends that same section to specify that audits will be conducted to determine compliance, while previously the regulation specified only that audits may be conducted.

This rule amends § 1400.6, ''Joint and Several Liability'' (redesignated, previously § 1400.7), to clarify possible conditions for release from liability. The provisions of the 2008 Farm Bill now extend the reach of liability for the recovery of payments to any party determined to have participated in a scheme or device or other equally serious actions for the purpose of evading the provisions of this part. In the event a person cooperates with the enforcement of these provisions, the Executive Vice President of CCC has the authority to partially or fully release that person from liability.

Payment Eligibility—Actively Engaged in Farming

This rule changes the title of subpart C from ''Actively Engaged in Farming Determinations'' to ''Payment Eligibility.'' The general structure and content of this subpart remain unchanged. The 2008 Farm Bill requires that, in order to be eligible for payment, a person or legal entity be actively engaged in farming, and further defines ''actively engaged'' as consisting of a substantial contribution of capital, equipment, or land and personal labor or active personal management. This interim rule clarifies the ''actively engaged'' eligibility requirements to be consistent with the 2008 Farm Bill, including making discretionary changes as to what constitutes a substantial contribution and who must make such a contribution. This rule provides that a contribution of active personal labor, active personal management, or a combination thereof, must be provided by each member or shareholder that has an ownership interest in an entity that requests program benefits and collectively, such contributions must be significant and commensurate. Furthermore, the contribution of active personal labor or active personal management of each member of shareholder must be made to the farming operation on a regular basis and must be identifiable and documentable as a separate and distinct contribution from that of any other member or shareholder in the farming operation. The 2008 Farm Bill requires a significant contribution of active personal labor or active personal management to a farming operation to qualify a person or legal entity for payment. Previously, significant contributions could be made by members or stockholders that comprised only 50 percent ownership interest in the entity being qualified in order to qualify all the members or stockholders. Previously, the active personal labor or management contribution for the legal entity could be made by some of the stockholders or members, while the remaining stockholders and members could make no requisite and at-risk contributions to the farming operation and still realize benefits indirectly through the legal entity.

An example to illustrate the changes in this interim rule concerning what constitutes actively engaged in farming is provided below:

Corporation A is held equally by stockholders B, C, D and E. Corporation A provides all of the capital, leases all of the equipment, cash rents all of the land, and hires all of the labor necessary to farm this land. The stockholders represent that they equally provide all of the active personal management necessary to successfully conduct this farming operation. Regular management meetings are held, either in person or by conference call, in which the stockholders jointly make all decisions concerning all financing, purchasing, planting, harvesting, marketing and the supervision of all hired labor in the farming operation.

Previously, the corporation just described would be considered actively engaged in farming by the entity's contributions of capital, land and equipment, and the collective contribution of active personal management of all stockholders. The stockholders that made contributions to qualify the entity held more than 50 percent ownership interest in the entity that requested program benefits.

With this rule, each of the stockholders in this example would be required to establish that their respective contribution of active personal management was made on a regular basis, and was identifiable and documentable as separate and distinct from the other stockholders of the entity. For example, stockholder B could represent through copies of signed purchase orders that stockholder B was individually responsible for obtaining and purchasing all inputs for the farming operation on behalf of the Corporation. Stockholder C could represent through signed contracts and delivery agreements with grain elevators and a cotton gin that stockholder C was individually responsible for the marketing of all commodities produced by the Corporation's farming operation. Stockholder D could represent through copies of payroll records that stockholder D was individually responsible for the supervision of all hired labor utilized by the Corporation's farming operation. However, if Stockholder E made no claim of management that is separate and distinct from the other stockholders, then as the result of Stockholder E's failure to meet the requirements of this interim rule, the payments issued to the payment entity, that being Corporation A, would be reduced by the interest held by Stockholder E.

Reduction or Denial of Program Payments and Benefits

The provisions for the denial of program payments and benefits are expanded under the 2008 Farm Bill. Payments and benefits will be denied for at least two years if a person or legal entity is determined to have adopted a scheme or device to circumvent the payment eligibility and payment limitation requirements. This interim rule now provides additional guidance in § 1400.5, ''Denial of Program Benefits'' (renamed, previously titled ''Scheme or Device''), on what actions are considered to be a scheme or device and what the indicators may be that a scheme is being perpetrated. Under the 2008 Farm Bill, if fraud or other equally serious actions are determined to exist, all parties involved may be ineligible for all payments and benefits under the programs subject to the provisions of this part for up to 5 years.

The application of the AGI limitation requires a reduction in any payments or

benefits issued to a joint venture, general partnership or legal entity in an amount commensurate with the direct and indirect ownership interest of any person or legal entity that fails to comply with the respective adjusted gross income limitation eligibility standard for the direct receipt of such payments or benefits. Previously, ownership interest was tracked and reviewed to the sixth level to determine whether a commensurate reduction was applicable and the extent of such reduction. Now with the implementation of direct attribution for payment limitation in which ownership in legal entities is tracked through four levels, the ownership interest in legal entities for the application of the AGI limitations will also be tracked through the same number of levels.

Miscellaneous Minor Changes and Housekeeping

Subparts D, ''Cash Rent Tenants,'' and E, ''Foreign Persons'' (redesignated, previously subparts E and F), are largely unchanged, except for the references to natural persons and legal entities discussed above and that were made throughout the part. This rule makes minor amendments to subpart D, ''Cash Rent Tenants,'' to clarify that if a cash rent tenant is a joint operation, each member must make a significant contribution of active personal labor or management to be eligible for payments. This amendment is needed to be consistent with other changes in this part regarding payment eligibility and with the 2008 Farm Bill.

This rule reorganizes part 1400, including changing the order of some sections, renumbering sections, and renaming some sections and subparts. These housekeeping changes are intended to improve readability and do not make substantive changes to the regulations. Subpart B, ''Person Determinations,'' is renamed ''Payment Limitation.'' Subpart C, ''Actively Engaged in Farming Determinations,'' is renamed ''Payment Eligibility.'' Subpart D, ''Permitted Entities,'' is removed; subsequent subparts are renumbered. Throughout the part, references to ''individual(s) and entities'' are changed to ''person(s) and legal entities,'' consistent with the 2008 Farm Bill requirement to attribute payments to natural persons. Similarly, references to 2003 through 2007 crop years are changed to refer to the 2009 through 2012 crop years.

SUMMARY OF AMENDMENTS TO 7 CFR PART 1400 MADE BY THIS RULE

Previous regulation	Revised regulation
Title of part 1400. Payment Limitation and Payment Eligibility.	Title amended to specify ''for 2009 and Subsequent Crop, Program or Fiscal years.''
Subpart A—General provisions	
§ 1400.1 Applicability	Revised references to the programs for which this regulation now applies including ACRE, NAP, ELAP, LFP, LIP, TAP, and applicable NRCS conservation programs, and added the respective payment limitations. Applicable NRCS conservation programs include: • Agricultural Management Assistance (AMA), • Agricultural Water Enhancement Program (AWEP), • Chesapeake Bay Watershed Program (CBWP), • Conservation Stewardship Program (CSTP), • Cooperative Conservation Partnership Initiative (CCPI), • Environmental Quality Incentives Program (EQIP), • Farm and Ranchland Protection Program (FRPP), • Grasslands Reserve Program (GRP), • Wetlands Reserve Program (WRP), and • Wildlife Habitat Incentive Program (WHIP). Removed the programs for which this regulation no longer applies.
§ 1400.2 Administration	Provided a reference point for the start of the 60-day period for CCC to make determinations. Clarified that the 60-day time period specified does not apply to the completion of end of year reviews for compliance.
§ 1400.3 Definitions	New definitions for attribution, average adjusted gross income, average adjusted gross farm income, average adjusted gross nonfarm income, contribution, and legal entity. Revised definitions for person, joint operation, active personal labor, and active personal management. Removed definitions of entity, Indian tribal ventures, permitted entity, and substantial beneficial interest.
§ 1400.4 Indian Tribal Ventures	Title changed to Indian Tribes. Added that Indian tribes, as defined, are exempt from all provisions of this part.
§ 1400.5 Scheme or Device	Title changed to Denial of program benefits: Added (1) Indicators of actions that may be considered a scheme or device; (2) The period of ineligibility if fraud is determined; (3) Producer ineligibility extends to cash rent tenants; and (4) Denial of benefits to all parties on a pro rata basis according to ownership interest.
§ 1400.6 Joint and Several Liability	Added (1) The basis and extent of ineligibility and payment recovery and (2) Possible conditions for partial or full release from liability. Removed reference to individuals and entities considered one ''person.''
§ 1400.7 Commensurate Contributions	Title changed to Commensurate Contributions and Risk. Revised reference from individuals and entities to persons and legal entities. Added that risk must be commensurate with the claimed share of the farming operation.
§ 1400.9 Appeals	Revised reference from individuals and entities to persons and legal entities.
1400 Subpart B Person Determinations	Renamed to Payment Limitation.
§ 1400.100 through 1400.107	Removed all references to ''person'' determinations and the timing of making such ''person'' determinations. Replaced with (1) Provisions for the control and limitation of payments to persons and legal entities by direct attribution; (2) Limitations and other restrictions for payments to States, political subdivisions and agencies thereof; (3) New provisions applicable only to spouses;

SUMMARY OF AMENDMENTS TO 7 CFR PART 1400 MADE BY THIS RULE—Continued

Previous regulation	Revised regulation
	(4) Additional requirements for the increase in persons to a farming operation that are eligible for payment; and (5) Required information from all persons and legal entities that request program payments. Removed sections 1400.108 and 109.
1400 Subpart C Actively Engaged in Farming Determinations. § 1400.201 through 1400.213	Renamed to Payment Eligibility. Revised all references of individual and entity to person and legal entity. For uniformity, moved requirements of the definitions of ''separate and distinct interest'' and significant contribution from § 1400.3, ''Definitions,'' to the applicable sections of the subpart. Included additional requirements for the contributions of active personal labor or management by each of the stockholders or members of a legal entity in order for the legal entity to be considered actively engaged in farming.
1400 Subpart D Permitted Entities ..... § 1400.301	Renamed Subpart D Cash Rent Tenants. Removed all reference to permitted entities and the requirements of designation thereof for payment. Clarified the cash rent tenant requirements for joint operations and entities. Revised all references of individuals and entities to persons and legal entities. Redesignated from § 1400.401.
1400 Subpart E Cash Rent Tenants ..... § 1400.401	Redesignated Subpart E to Subpart D. Redesignated § 1400.401 to 1400.301.
1400 Subpart F Foreign Persons ..... §§ 1400.501 through 1400.502	Redesignated Subpart F to Subpart E. Redesignated §§ 1400.501 through 1400.502 to §§ 1400.401 through 1400.402. Revised all references of individuals and entities to persons and legal entities; included revised standards for active personal labor in the definition of substantial contribution of active personal labor.
1400 Subpart G Average Adjusted Gross Income. § 1400.600 through 1400.603	Redesignated Subpart G to Subpart F. Redesignated §§ 1400.600 through 1400.603 to §§ 1400.500 through 1400.503. Revised (1) All references of individuals and entities to persons and legal entities; (2) All references of 2003 through 2007 years of applicability to 2009 through 2012; (3) All references of the $2.5 million limitation to the three limitations—2 for commodity programs and one for conservation programs; and (4) The reference and application of the test for farm income from 75 percent to not less than 66.66 percent. Included the revisions (1) The definition and sources of income from farming, ranching, forestry and related activities and (2) Ownership interest in entities will be tracked through only four levels, rather than six, for consistency with the same number of levels as for direct attribution of payments.

Notice and Comment

Section 1601 of the 2008 Farm Bill requires that these amendments be issued through an interim rule for the 2009 and subsequent crop, fiscal, or program years. This rule is effective on publication, but subject to modification after the consideration of comments. CCC will consider comments received during the comment period for this interim rule, which ends January 28, 2009. After the comment period closes, CCC will publish another document in the **Federal Register**. The document will include a discussion of any comments received during the comment period and any amendments made to the rule as a result of the comments.

Executive Order 12866

The Office of Management and Budget (OMB) designated this interim rule as significant under Executive Order 12866. A cost-benefit assessment is summarized below and is available from the contact listed above.

Summary of Economic Impacts

The 2008 Farm Bill makes significant changes in how USDA will administer payment limits and determine who is eligible for payments. Those changes will be implemented beginning with the 2009 crop, fiscal, or program year, as applicable. The most fundamental change in how payment limits are to be administered is that each member or owner of farming entities will be assigned a limit. The payment limits that applied to the entities themselves under the 2002 Farm Bill are retained. The motivation for this change is twofold:

(1) Increase transparency by allocating payments made to farming entities to their members.

(2) Moderate payments by adding another layer of payment limits. For example, the 2008 Farm Bill maintains payment limits on the corporations themselves and adds additional limits on the owners of farming corporations.

USDA will be required to track payments made to entities, such as farming corporations, to the owners of those entities. Such tracking is called direct attribution. Both entities and their owners will now have payment limits. Direct attribution will involve extensive USDA staff resources, and consequently cost, in the implementation phase and has the potential for some reduction in Government outlays. Reductions in outlays will diminish as farmers reorganize their operations in order to capture the highest possible payments. Due to uncertainty about the costs it is difficult to estimate annual impacts.

Other changes made in this interim rule are expected to result in little changes to Government outlays.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act since CCC is not required to publish a notice of proposed rulemaking for this rule. CCC is authorized by section 1601 of the 2008 Farm Bill to issue an interim rule effective on publication with an opportunity for comment.

Environmental Assessment

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347, the regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508), and FSA's regulations for compliance with NEPA (7 CFR part 799). The changes to Payment Limitation and Payment Eligibility, required by the 2008 Farm Bill that are identified in this rule, are non-discretionary. Therefore, FSA has determined that NEPA does not apply to this rule and no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

The interim rule has been reviewed in accordance with Executive Order 12988. This rule is not retroactive and does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought concerning the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

The policies contained in this rule do not impose substantial unreimbursed direct compliance costs on Indian tribal governments or have tribal implications that preempt tribal law.

Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local or tribal governments, or the private sector. In addition, CCC is not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

The title and number of the Federal assistance programs in the Catalog of Federal Domestic Assistance to which this interim rule applies are:

10.055—Direct and Counter-Cyclical Payments Program.
10.069—Conservation Reserve Program.
10.072—Wetlands Reserve Program.
10.082—Tree Assistance Program.
10.912—Environmental Quality Incentives Program.
10.914—Wildlife Habitat Incentive Program.
10.917—Agricultural Management Assistance.
10.918—Ground and Surface Water Conservation—Environmental Quality Incentives Program.
10.920—Grassland Reserve Program.

This interim rule also applies to the following Federal assistance programs that are not in the Catalog of Federal Domestic Assistance:

- ACRE,
- ELAP,
- LFP,
- LIP,
- SURE,
- AWEP,
- CBWP,
- CSTP,
- CCPI, and
- FRPP.

Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and the programs administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

CCC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in CFR Part 1400

Agriculture, Loan programs—agriculture, Conservation, Price support programs.

■ For the reasons discussed above, this rule revises 7 CFR part 1400 to read as follows:

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY FOR 2009 AND SUBSEQUENT CROP, PROGRAM, OR FISCAL YEARS

Subpart A—General Provisions

Subpart B—Payment Limitation

Subpart C—Payment Eligibility

Subpart D—Cash Rent Tenants

Subpart E—Foreign Persons

Subpart F—Average Adjusted Gross Income Limitation

Authority: 7 U.S.C. 1308, 1308–1, 1308–2, 1308–3, 1308–3a, 1308–4, and 1308–5.

Subpart A—General Provisions

§ 1400.1 Applicability.

(a) This part, except as otherwise noted, is applicable to all of the following programs and any other

programs as provided in individual program regulations in this chapter (including, but not limited to, all price support programs in parts 1421 and 1434 of this chapter):

(1) The Direct and Counter-cyclical Program (DCP), including the Average Crop Revenue Election (ACRE), part 1412 of this chapter;

(2) The Conservation Reserve Program (CRP), part 1410 of this chapter;

(3) The Noninsured Crop Disaster Assistance Program (NAP), part 1437 of this chapter;

(4) The Supplemental Revenue Assistance Program (SURE), part 1480 of this chapter;

(5) The Livestock Forage Disaster Program (LFP), Livestock Indemnity Program (LIP), and the Emergency Assistance Program for Livestock, Honey Bees and Farm-raised Fish (ELAP), part 1439 of this chapter;

(6) The Tree Assistance Program (TAP), part 783 of this title; and

(7) The Natural Resource Conservation Service (NRCS) conservation programs of this title including Agricultural Management Assistance (AMA), Agricultural Water Enhancement Program (AWEP), Chesapeake Bay Watershed Program (CBWP), Conservation Stewardship Program (CSTP), Cooperative Conservation Partnership Initiative (CCPI), Environmental Quality Incentives Program (EQIP), Farm and Ranchland Protection Program (FRPP), Grasslands Reserve Program (GRP), Wetlands Reserve Program (WRP), and Wildlife Habitat Incentive Program (WHIP).

(b) This part will apply to the programs specified in:

(1) Paragraphs (a)(1), (3), (4), and (6) of this section on a crop year basis;

(2) To the program in paragraph (a)(2) of this section on a fiscal year basis;

(3) To the programs in paragraph (a)(5) of this section on a calendar year basis; and

(4) To the programs in paragraph (a)(7) of this section based on available funding.

(c) This part will be used to determine the manner in which payments will be attributed to persons and legal entities for the payment limitations provided in this section and to other programs as provided in individual program regulations in this chapter.

(d) Where more than one provision of this part may apply, the provision which is most restrictive on the program participant will be applied.

(e) The payment limitations of this part are not applicable to:

(1) Payments made under State conservation reserve enhancement program agreements approved by the Secretary and

(2) Payments made subject to this part if ownership interest in land or a commodity is transferred as the result of the death of a program participant and the new owner of the land or commodity has succeeded to the contract of the prior owner. If the successor is otherwise eligible, payments cannot exceed the amount the previous owner was entitled to receive at the time of death.

(f) The following amounts are the limitations on payments per person or legal entity for the applicable period for each payment or benefit.

Payment or benefit	Limitation per person or legal entity, per crop, program, or fiscal year
(1) Direct Payments for covered commodities [1]	$40,000
(2) Direct Payments for peanuts [1]	40,000
(3) CRP annual rental payments [2]	50,000
(4) GRP	50,000
(5) WHIP	50,000
(6) WRP	50,000
(7) Counter-Cyclical Payments for covered commodities [3]	65,000
(8) Counter-Cyclical Payments for peanuts [3]	65,000
(9) NAP payments	100,000
(10) Supplemental Agricultural Disaster Assistance [4]	100,000
(11) TAP	100,000
(12) CSTP [5]	200,000
(13) EQIP	300,000

[1] If the person or legal entity has a direct or indirect interest in payments earned on a farm that is in ACRE, this limitation will reflect a 20 percent reduction in direct payments on each farm that is participating in ACRE.

[2] Limitation applicable only to CRP contracts approved prior to October 1, 2008.

[3] Under ACRE, this amount will be a combined limitation for counter-cyclical and ACRE payments. If a person or legal entity has a direct or indirect interest in payments earned on a farm that is participating in ACRE, this limitation will reflect an increase for the amount that the direct payments were reduced.

[4] Total payments received under Supplemental Agricultural Disaster Assistance through SURE, LIP, LFP, and ELAP may not exceed $100,000.

[5] The $200,000 limit is the total limit for 2009 through 2012. Note: AMA, AWEP, CBWP, CCPI, and FRPP are all limited by available funding rather then an amount by participant.

(g) With respect to contracts for conservation programs approved prior to October 1, 2008, the payment limitation rules in 7 CFR part 1400 in effect on September 30, 2008 will be applicable (see 7 CFR part 1400, revised as of January 1, 2008).

§ 1400.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), and the Administrator, Farm Service Agency (FSA). In the field, the regulations in this part will be administered by the FSA State and county committees (referred to as ''State committee'' and ''county committee,'' respectively).

(b) State executive directors, county executive directors, and State and county committees do not have authority to modify or waive any of the provisions of this part.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee that has not been taken by such committee. The State committee may also:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation in this part to a State or county committee precludes the Executive Vice President, CCC, and the Administrator, FSA, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Benefits from programs subject to this part may not be issued until all required forms and necessary payment eligibility and payment limitation determinations are made.

(f) The initial payment eligibility determinations will be made within 60 days after the required forms and any other supporting documentation needed in making such determinations are received in the county FSA office. If the determination is not made within 60 days, the producer will receive a determination for that program year that reflects the determination sought by the producer unless the Deputy Administrator determines that the producer did not follow the farm operating plan that was presented to the county or State committee for such year.

(g) Initial determinations concerning the provisions of this part will not be made by a county FSA office with respect to any farm operating plan that is for a joint operation with six or more members.

(h) Reviews of farming operations and corresponding documentation submitted by program participants may be conducted at any time to determine compliance with applicable statutes and regulations. The completion of such reviews is not subject to the time constraints specified in paragraph (f) of this section.

§ 1400.3 Definitions.

(a) The terms defined in part 718 of this title are applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions are also applicable to this part:

Active personal labor means personally providing physical activities necessary in a farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities in the farming operation. Other physical activities include those physical activities required to establish and maintain conserving cover crops on CRP acreages and those physical activities necessary in livestock operations.

Active personal management means personally providing and participating in:

(1) The general supervision and direction of activities and labor involved in the farming operation; or

(2) Services (whether performed on-site or off-site) reasonably related and necessary to the farming operation, including:

(i) Supervision of activities necessary in the farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities, as well as activities required to establish and maintain conserving cover crops on CRP acreage and activities required in livestock operations;

(ii) Business-related actions, which include discretionary decision making;

(iii) Evaluation of the financial condition and needs of the farming operation;

(iv) Assistance in the structuring or preparation of financial reports or analyses for the farming operation;

(v) Consultations in or structuring of business-related financing arrangements for the farming operation;

(vi) Marketing and promotion of agricultural commodities produced by the farming operation;

(vii) Acquiring technical information used in the farming operation; and

(viii) Any other management function reasonably necessary to conduct the farming operation and for which service the farming operation would ordinarily be charged a fee.

Administrator means the Administrator of the Farm Service Agency including any designee of the Administrator.

Alien means any person not a citizen or national of the United States.

Attribution means the combination of any payment made directly to a person or legal entity with the person's or legal entity's pro rata direct and indirect interest in payments received by a legal entity, joint venture, or general partnership.

Average Adjusted Gross Farm Income means the average of the portion of adjusted gross income of the person or legal entity that is attributable to activities related to farming, ranching, or forestry for the 3 taxable years preceding the most immediately preceding complete taxable year.

Average Adjusted Gross Income means the average of the adjusted gross income as defined under 26 U.S.C. 62 or comparable measure of the person or legal entity over the 3 taxable years preceding the most immediately preceding complete taxable year.

Average Adjusted Gross Nonfarm Income means the difference between the average adjusted gross income for the person or legal entity and the average adjusted gross farm income for the person or legal entity.

Capital means the funding provided by a person or legal entity to the farming operation, independent and separate from all other farming operations, in order for such operation to conduct farming activities. In determining whether a person or legal entity has independently contributed capital, in the form of funding, to the farming operation, such capital must have been derived from a fund or account separate and distinct from that of any other person or legal entity involved in such operation. Capital does not include the value of any labor or management that is contributed to the farming operation or any outlays for land or equipment. A capital contribution must be a direct out-of-pocket input of a specified sum or an amount borrowed by the person or legal entity and does not include advance program payments.

Chief means the Chief of the Natural Resources Conservation Service including any designee of the Chief (also referred to in this part as NRCS Chief).

Contribution means providing land, capital, or equipment assets, and the actions of providing active personal labor or active personal management to a farming operation in exchange for, or with the expectation of, deriving benefit based solely on the success of the farming operation.

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency including any designee.

Equipment means the machinery and implements needed by the farming operation to conduct activities of the farming operation, including machinery and implements involved in land preparation, planting, cultivating, harvesting, or marketing of the crops involved. Equipment also includes machinery and implements needed to establish and maintain conserving cover crops on CRP acreages and those needed to conduct livestock operations. Such equipment may be leased from any source. If such equipment is leased from another person or legal entity with an interest in the farming operation, such equipment must be leased at a fair market value.

Family member means a person to whom another member in the farming operation is related as a lineal ancestor, lineal descendant, sibling, spouse, or otherwise by marriage.

Farming operation means a business enterprise engaged in the production of agricultural products, commodities, or livestock, operated by a person, legal entity, or joint operation that is eligible

to receive payments, directly or indirectly, under one or more of the programs specified in § 1400.1. A person or legal entity may have more than one farming operation if such person or legal entity is a member of one or more joint operations.

Indian tribe means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601–1629h), which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

Interest in a farming operation means one of the following:

(1) Owner or renter of the land in the farming operation;

(2) An interest in the agricultural products, commodities, or livestock produced by the farming operation; or

(3) A member of a joint operation that either owns or rents land in the farming operation or has an interest in the agricultural products, commodities, or livestock produced by the farming operation.

Irrevocable trust means a trust as specified in this definition. Any trust not meeting this definition will be considered a revocable trust. A trust may be considered to be an irrevocable trust only if:

(1) The trust cannot be modified or terminated by the grantor;

(2) The grantor has no future, contingent, or remainder interest in the corpus of the trust; and

(3) The trust agreement does not provide for the transfer of the corpus of the trust to the remainder beneficiary in less than 20 years from the date the trust is established except in cases where the transfer is contingent upon either the remainder beneficiary achieving at least the age of majority or the death of the grantor or income beneficiary.

Joint operation means a general partnership, joint venture, or other similar business organization in which the members are jointly and severally liable for the obligations of the organization.

Land means farmland that meets the specific requirements of the applicable program. Such land may be leased from any source. If such land is leased from another person or legal entity with an interest in the crop or crop proceeds, such land must be leased at a fair market value.

Lawful alien means any person who is not a citizen or national of the United States but who is admitted into the United States for permanent residence under the Immigration and Nationality Act and possesses a valid Alien Registration Receipt Card issued by the United States Citizenship and Immigration Services, Department of Homeland Security.

Legal entity means an entity created under Federal or State law and that:

(1) Owns land or an agricultural commodity, product, or livestock; or

(2) Produces an agricultural commodity, product, or livestock.

Payment means:

(1) Payments made in accordance with part 1412 or successor regulation of this chapter;

(2) CRP annual rental payments made in accordance with part 1410 or successor regulation of this chapter;

(3) NAP payments made in accordance with part 1437 or successor regulation of this chapter; and

(4) For other programs, any payments designated in individual program regulations in this chapter.

Person means an individual, natural person and does not include a legal entity.

Public school means a primary, elementary, secondary school, college, or university that is directly administered under the authority of a governmental body or that receives a predominant amount of its financing from public funds.

Secretary means the Secretary of the United States Department of Agriculture.

Sharecropper means a person who performs work in connection with the production of the crop under the supervision of the operator and who receives a share of such crop in return for the provision of such labor.

Significant contribution means the provision of the following to a farming operation:

(1)(i) For land, capital, or equipment contributed independently by a person or legal entity, a contribution that has a value at least equal to 50 percent of the person's or legal entity's commensurate share of the total:

(A) Value of the capital necessary to conduct the farming operation;

(B) Rental value of the land necessary to conduct the farming operation; or

(C) Rental value of the equipment necessary to conduct the farming operation; or

(ii) If the contribution by a person or legal entity consists of any combination of land, capital, and equipment, such combined contribution must have a value at least equal to 30 percent of the person's or legal entity's commensurate share of the total value of the farming operation;

(2) For active personal labor, an amount contributed by a person to the farming operation that is described by the smaller of the following:

(i) 1,000 hours per calendar year; or

(ii) 50 percent of the total hours that would be necessary to conduct a farming operation that is comparable in size to such person's or legal entity's commensurate share in the farming operation;

(3) With respect to active personal management, activities that are critical to the profitability of the farming operation, taking into consideration the person's or legal entity's commensurate share in the farming operation; and

(4) With respect to a combination of active personal labor and active personal management, when neither contribution by itself meets the requirement of paragraphs (2) and (3) of this definition, a combination of active personal labor and active personal management that, when made together, results in a critical impact on the profitability of the farming operation in an amount at least equal to either the significant contribution of active personal labor or active personal management as defined in paragraphs (2) and (3) of this definition.

Substantial amount of active personal labor means the provision of active personal labor to a farming operation in an amount described by the smaller of the following:

(1) 1,000 hours per calendar year; or

(2) 50 percent of the total hours that would be necessary to conduct a farming operation that is comparable in size to the person's or legal entity's commensurate share in the farming operation.

Total value of the farming operation means the total of the costs, excluding the value of active personal labor and active personal management contributed by a person who is a member of the farming operation, needed to carry out the farming operation for the year for which the determination is made.

§ 1400.4 Indian Tribe.

Provisions of this part do not apply to Indian tribes as defined in § 1400.3.

§ 1400.5 Denial of program benefits.

(a) All or any part of a payment otherwise due a person or legal entity on all farms in which the person or legal entity has an interest may be withheld or be required to be refunded if the person or legal entity fails to comply with the provisions of this part.

(b) All or any part of a payment otherwise due a person or legal entity on all farms in which the person or legal entity has an interest may be withheld

or be required to be refunded if the person or legal entity fails to comply with the provisions of this part and adopts or participates in adopting a scheme or device designed to evade this part, or that has the effect of evading this part. Such acts may include, but are not limited to:

(1) Concealing information that affects the application of this part;

(2) Submitting false or erroneous information; or

(3) Creating a business arrangement using rental agreements and other arrangements to conceal the interest of a person or legal entity in a farm or farming operation for the purpose of obtaining program payments the person or legal entity would otherwise not be eligible to receive. Indicators of such business arrangement include, but are not limited to the following:

(i) No crops are grown or agricultural commodities produced by the represented operation;

(ii) The represented operation has no appreciable assets;

(iii) The only source of capital for the operation is the program payments; or

(iv) The represented operation exists only for the receipt of program payments.

(c) If the Deputy Administrator determines that a person or legal entity has adopted a scheme or device to evade, or that has the purpose of evading, the provisions of 7 U.S.C. 1308, 1308–1, or 1308–3, as amended, such person or legal entity will be ineligible to receive payments under the programs specified in § 1400.1 in the year for such scheme or device was adopted and the succeeding year.

(d) A person or legal entity that perpetuates a fraud, commits fraud, or participates in equally serious actions for the benefit of the person or legal entity, or the benefit of any other person or legal entity, to exceed the applicable limit on payments or the requirements of this part will be subject to a five-year denial of all program benefits. Such other equally serious actions may include, but are not limited to:

(1) Knowingly engaged in, or aided in the creation of a fraudulent document;

(2) Failed to disclose material information relevant to the administration of the provisions of this part, or

(3) Any other actions of a person or legal entity determined by the Deputy Administrator as designed or intended to circumvent the provisions of this subpart.

(e) Program payments and benefits will be denied on pro-rata basis:

(1) In accordance to the interest held by the person or legal entity in any other legal entity or joint operations and

(2) To any person or legal entity that is a cash rent tenant on land owned or under control of a person or legal entity for which a determination of this section has been made.

§ 1400.6 Joint and several liability.

(a) Any legal entity, including joint ventures and general partnerships, and any member of a legal entity determined to have knowingly participated in a scheme or device, or other such equally serious actions to evade the payment limitation provisions, or that has the purpose of evading the provisions of this part, will be jointly and severally liable for any amounts determined to be payable as the result of the scheme or device, or other such equally serious actions, including amounts necessary to recover the payments.

(b) Any person or legal entity that cooperates in the enforcement of the payment limitation and payment eligibility provisions of this part may be partially or fully released from liability, as determined by the Executive Vice President, CCC.

(c) The provisions of this section will be applicable in addition to any liability that arises under a criminal or civil statute.

§ 1400.7 Commensurate contributions and risk.

(a) In order to be considered eligible to receive payments under the programs specified in § 1400.1, a person or legal entity specified in §§ 1400.202 through 1400.210 must have:

(1) A share of the profits or losses from the farming operation commensurate with the person's or legal entity's contribution(s) to the operation;

(2) Contribution(s) to the farming operation that are at risk for a loss; and

(3) Risk that is commensurate with the person's or legal entity's claimed share of the farming operation.

(b) [Reserved]

§ 1400.8 Equitable treatment.

(a) Actions taken by a person or legal entity in good faith based on action or advice of an authorized representative of the Administrator may be accepted as meeting the requirements of this part to the extent the Administrator deems necessary to provide fair and equitable treatment to such person or legal entity.

(b) Actions taken by a person or legal entity in good faith based on action or advice of an authorized representative of the NRCS Chief may be accepted as meeting the requirements of this part to the extent the NRCS Chief deems necessary to provide fair and equitable treatment to such person or legal entity.

§ 1400.9 Appeals.

(a) A person or legal entity may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth in part 780 of this title. With respect to such appeals, the applicable reviewing authority will:

(1) Schedule a hearing with respect to the appeal within 45 days following receipt of the written appeal and

(2) Issue a determination within 60 days following the hearing.

(b) The time limitations provided in paragraph (a) will not apply if:

(1) The appellant, or the appellant's representative, requests a postponement of the scheduled hearing;

(2) The appellant, or the appellant's representative, requests additional time following the hearing to present additional information or a written closing statement;

(3) The appellant has not timely presented information to the reviewing authority; or

(4) An investigation by the Office of Inspector General is ongoing or a court proceeding is involved that affects the amount of payments a person may receive.

(c) If the deadlines provided in paragraphs (a) and (b) of this section are not met, the relief sought by the producer's appeal will be granted for the applicable crop year unless the Deputy Administrator determines that the producer did not follow the farm operating plan initially presented to the county committee for the year that is the subject of the appeal.

(d) An appellant may waive the provisions of paragraphs (a) and (b) of this section.

Subpart B—Payment Limitation

§ 1400.100 Revocable trust.

A revocable trust and the grantor of the trust will be considered to be the same person.

§ 1400.101 Minor children.

(a) Except as provided in paragraph (b) of this section, payments received by a child under 18 years of age as of April 1 of the applicable crop, program, or fiscal year, including such a person who is the beneficiary of a trust or who is an heir of an estate, will be attributed for the entire crop, program, or fiscal year to the parent receiving the greater amount of program payments subject to this part or to any court-appointed person such as a guardian or conservator who is responsible for the minor.

(b) Payments received by a minor will not be attributed to the minor's parent or to any court-appointed person such as a guardian or conservator who is responsible for the minor if all of the following apply:

(1) The minor is a producer on a farm and the minor's parents or any court-appointed person such as guardian or conservator who is responsible for the minor, does not have any interest in the farm;

(2) The minor has established and maintains a separate household from the minor's parents or any court-appointed person such as a guardian or conservator who is responsible for the minor, and such minor personally carries out the farming activities with respect to the minor's farming operation for which there is a separate accounting; and

(3) The minor does not live in the same household as such minor's parents and:

(i) Is represented by a court-appointed guardian or conservator who is responsible for the minor and

(ii) Ownership of the farm is vested in the minor.

(c) A person will be considered to be a minor until the age 18 is reached. Court proceedings conferring majority on a person under 18 years of age will not change such person's status as a minor.

§ 1400.102 States, political subdivisions, and agencies thereof.

(a) A State, political subdivision, and agency thereof, is not eligible for payments or benefits under programs specified in § 1400.1, unless the exception provided in paragraph (b) of this section applies.

(b) Subject to the limitation in paragraph (c) of this section, a State, political subdivision, and any agency thereof, may receive payments or benefits under programs specified in § 1400.1 if both of the following apply:

(1) The land for which payments are received is owned by the State, political subdivision, or agency thereof and

(2) The payments are used solely for the support of public schools;

(c) The total payments described in paragraph (b) of this section cannot exceed $500,000 annually except with respect to payments made with respect to the following States: Alaska, Delaware, Hawaii, Idaho, Maine, Montana, North Dakota, New Hampshire, Rhode Island, South Dakota, Vermont, and Wyoming. The list of States that meet the criteria in paragraph (c) of this section may change due to changes in population of any State.

§ 1400.103 Charitable organizations.

(a) A charitable organization, including a club, society, fraternal organization, or religious organization will be considered a separate legal entity for payment limitation purposes to the extent that such an entity is independently engaged in the production of crops, agricultural commodities, or livestock, except where the land or the proceeds from the farming operation may transfer to a legal entity that exercises control or authority over such organization.

(b) If the land or the proceeds from the farming operation may transfer to a legal entity that exercises control or authority over the charitable organization, payments to the charitable organization will be attributed to the parent organization.

§ 1400.104 Changes in farming operations.

(a) Any change in a farming operation that would increase the number of persons or legal entities to which the provisions of this part apply must be bona fide and substantive. If bona fide, the following will be considered to be a substantive change in the farming operation:

(1) The addition of a family member to a farming operation in accordance with § 1400.208, except that such an addition will not affect the status of any other person or legal entity that is added to the farming operation;

(2) With respect to a landowner only, a change from a cash rent to a share rent;

(3) An increase through the acquisition of base acres not previously involved in the farming operation of at least 20 percent or more in the total base acres involved in the farming operation.

(i) For the purpose of payment limitations, such an increase in base acres will be considered an applicable bona fide and substantive change for the increase of only one person or legal entity to the farming operation, unless;

(ii) A representative of the State FSA office determines, based on the magnitude and complexity of the change represented, the increase in base acres supports additional persons or legal entities to the farming operation.

(4) A change in ownership by sale or gift of equipment from a person or legal entity previously engaged in a farming operation to a person or legal entity that has not been involved in such operation. The sale or gift of equipment will be considered to be bona fide and substantive only if:

(i) The transferred amount of such equipment is commensurate with the new person's or legal entity's share of the farming operation,

(ii) The sale or gift of the equipment was based on the equipment's fair market value,

(iii) The former owner of the equipment has no control over such equipment,

(iv) The transaction was not financed by the former owner, and

(v) Preference was not given to the former owner to re-purchase the equipment at a later date.

(5) A change in ownership by sale or gift of land from a person or legal entity who previously has been engaged in a farming operation to a person or legal entity that has not been involved in such operation. The sale or gift of land will be considered to be bona fide and substantive only if:

(i) The transferred amount of such land is commensurate with the new person's or legal entity's share of the farming operation,

(ii) The sale or gift of land was based on the land's fair market value,

(iii) The former owner of the land has no control over such land,

(iv) The transaction was not financed by the former owner, and

(v) Preference was not given to the former owner to re-purchase the land at a later date.

(b) Unless the requirements in paragraph (a) of this section are met, the increase in persons or legal entities in the farming operation will not be recognized for payment limitation purposes and the additional persons or legal entities are not eligible for program payment identified in § 1400.1 otherwise resulting from the farming operation.

§ 1400.105 Attribution of payments.

(a) A payment made directly to a person or legal entity will be combined with the pro rata interest of the person or legal entity in payments received by a legal entity in which the person or legal entity has a direct or indirect ownership interest, unless the payments of the legal entity have been reduced by the pro rata share of the person or legal entity.

(b) A payment made to a legal entity will be attributed to those persons who have a direct and indirect ownership interest in the legal entity, unless the payment of the legal entity has been reduced by the pro rata share of the person.

(c) Attribution of payments made to legal entities will be tracked through four levels of ownership in legal entities as follows:

(1) First level of ownership—any payment made to a legal entity that is owned in whole or in part by a person will be attributed to the person in an

amount that represents the direct ownership interest in the first-tier or payment legal entity;

(2)(i) Second level of ownership—any payment made to a first-tier legal entity that is owned in whole or in part by another legal entity (referred to as a second-tier legal entity) will be attributed to the second-tier legal entity in proportion to the ownership of the second-tier legal entity in the first-tier legal entity;

(ii) If the second-tier legal entity is owned in whole or in part by a person, the amount of the payment made to the first-tier legal entity will be attributed to the person in the amount that represents the indirect ownership in the first-tier legal entity by the person.

(3) Third and fourth levels—except as provided in paragraph (2)(ii) of this section, any payments made to a legal entity at the third and fourth tiers of ownership will be attributed in the same manner as specified in paragraph (2)(i) of this section.

(4) Fourth-tier ownership—if the fourth-tier of ownership is that of a legal entity and not that of a person, a reduction in payment will be applied to the first-tier or payment legal entity in the amount that represents the indirect ownership in the first-tier or payment legal entity by the fourth-tier legal entity.

(d) For purposes of administering direct attribution, and to determine a person's or legal entity's ownership interest in a legal entity that receives a payment subject to limitation; the ownership interest on June 1 of each year will be used.

(e) Direct attribution of payments is not applicable to a cooperative association of producers with respect to commodities produced by the members of the association that are marketed by the association on behalf of the members of the association. The payments will instead be attributed to the producers as persons.

§ 1400.106 Payment limits.

(a) Payments made to a person or legal entity will not exceed the amounts specified in subpart A of this part.

(b) Payments made to a joint venture or general partnership cannot exceed, for each payment specified in subpart A of this part, the amount determined by multiplying the maximum payment amount specified in subpart A of this part by the number of persons and legal entities, other than joint ventures and general partnerships, that comprise the ownership of the joint venture or general partnership.

(c) Payments made to a legal entity will be reduced proportionately by an amount that represents the direct or indirect ownership in the legal entity by any person or legal entity that has otherwise reached the applicable maximum payment limitation.

§ 1400.107 Notification of interests.

(a) In order to be eligible to receive any payment specified in subpart A of this part, or any other program as provided in individual program regulations in this chapter, a person or legal entity must, provide information in the manner as prescribed by the Deputy Administrator.

(b) The information required to be submitted under paragraph (a) of this section must include:

(1) The name and social security number of each person, or the name and taxpayer identification number of each legal entity, that holds or acquires an ownership interest in the legal entity and

(2) The name and taxpayer identification number of each legal entity in which the person or legal entity holds an ownership interest.

Subpart C—Payment Eligibility

§ 1400.201 General provisions for determining whether a person or legal entity is actively engaged in farming.

(a) To be considered eligible to receive payments with respect to a particular farming operation, a person or legal entity must be actively engaged in farming with respect to such operation.

(b) Actively engaged in farming means, except as otherwise provided in this part, that the person or legal entity:

(1) Independently and separately makes a significant contribution to a farming operation of:

(i) Capital, equipment, or land, or a combination of capital, equipment, or land and

(ii) Active personal labor or active personal management, or a combination of active personal labor and active personal management;

(2) Has a share of the profits or losses from the farming operation commensurate with the person's or legal entity's contributions to the operation; and

(3) Makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the person's or legal entity's claimed share of the farming operation.

(c) All of the following factors will be taken into consideration in determining if the person or legal entity is independently and separately contributing a significant amount of capital, equipment, or land, or a combination of capital, equipment, or land, to the farming operation:

(1) A separate and distinct interest in the land, crop, and livestock involved in the farming operation;

(2) The demonstration of separate and total responsibility for the interest in the land, crop, and livestock in the farming operation; and

(3) All funds and business accounts of the farming operation are separate from that of any other person and legal entity.

(d) In determining if the person or legal entity is independently and separately contributing a significant amount of active personal labor or active personal management, all of the following factors will be taken into consideration:

(1) The types of crops and livestock produced by the farming operation;

(2) The normal and customary farming practices of the area;

(3) The total amount of labor and management necessary for such a farming operation in the area; and

(4) Whether the person or legal entity receives compensation for the labor and management activities.

§ 1400.202 Persons.

(a) A person will be considered to be actively engaged in farming with respect to a farming operation if:

(1) The person independently and separately makes a significant contribution to a farming operation of:

(i) Capital, equipment, or land, or a combination of capital, equipment, or land and

(ii) Active personal labor or active personal management, or a combination of active personal labor and active personal management;

(2) Has a share of the profits or losses from the farming operation commensurate with the person's or legal entity's contributions to the operation; and

(3) Makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the person's or legal entity's claimed share of the farming operation.

(b) If one spouse, or an estate of a deceased spouse, is determined to be actively engaged in farming as specified in paragraph (a) of this section, the other spouse is considered to have made a significant contribution, as specified in paragraph (a)(1)(ii) of this section, only to the same farming operation.

(c) If a farming operation is conducted by a person, and the capital, land, or equipment is contributed by the person, such capital, land, or equipment:

(1) Must be contributed directly by the person and must not be acquired as a result of a loan made to, guaranteed, co-signed, or secured by:

(i) Any other person, joint operation, or legal entity that has an interest in such farming operation;

(ii) Such person, joint operation, or legal entity by any other person, joint operation, or legal entity that has an interest in such farming operation or

(iii) Any other person, joint operation, or legal entity in whose farming operation such person, joint operation, or legal entity has an interest; and

(2) If acquired as a loan made to, guaranteed, co-signed, or secured by the persons, joint operations, or legal entities, the loan must:

(i) Bear the prevailing interest rate and

(ii) Have a repayment schedule considered reasonable and customary for the area.

§ 1400.203 Joint operations.

(a) A member of a joint operation will be considered to be actively engaged in farming with respect to a farming operation if the member:

(1) Makes a significant contribution of:

(i) Capital, equipment, or land or a combination of capital, equipment, or land and

(ii) Active personal labor or active personal management, or a combination of active personal labor and active personal management, and that are:

(A) Performed on a regular basis,

(B) Identifiable and documentable, and

(C) Separate and distinct from such contributions of any other member of the farming operation;

(2) Has a share of the profits or losses from the farming operation commensurate with the member's contributions to the operation; and

(3) Makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the member's claimed share of the farming operation.

(b) For a farming operation conducted by a joint operation in which the capital, land, or equipment is contributed by such joint operation, such capital, land, or equipment:

(1) Must be contributed directly by the joint operation and must not be acquired as a loan made to, guaranteed, co-signed, or secured by:

(i) Any person, legal entity, or other joint operation that has an interest in such farming operation, including either joint operation's members;

(ii) Such joint operation by any person, legal entity, or other joint operation that has an interest in such farming operation; or

(iii) Any person, legal entity, or other joint operation in whose farming operation such joint operation has an interest, and

(2) If acquired as a result of a loan made to, guaranteed, co-signed, or secured by the persons, legal entities, or joint operations with an interest in the operation as defined, the loan must:

(i) Bear the prevailing interest rate and

(ii) Have a repayment schedule considered reasonable and customary for the area.

(c) If a joint operation separately makes a significant contribution of capital, equipment, or land, or a combination of capital, equipment, or land, and the joint operation meets the provisions of § 1400.201(b)(2) and (b)(3), the members of the joint operation who make a significant contribution of active personal labor, active personal management, or a combination of active personal labor and active personal management to the farming operation as specified in paragraph (a)(1)(ii) of this section will be considered to be actively engaged in farming with respect to such farming operation.

§ 1400.204 Limited partnerships, limited liability partnerships, limited liability companies, corporations, and other similar legal entities.

(a) A limited partnership, limited liability partnership, limited liability company, corporation, or other similar legal entity will be considered to be actively engaged in farming with respect to a farming operation if:

(1) The legal entity independently and separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land;

(2) Each partner, stockholder, or member with an ownership interest makes a contribution, whether compensated or not compensated, of active personal labor, active personal management, or a combination of active personal labor and active personal management to the farming operation; that are:

(i) Performed on a regular basis;

(ii) Identifiable and documentable; and

(iii) Separate and distinct from such contributions of any other partner, stockholder or member of the farming operation;

(3) The contribution of the partners, stockholders and members is significant and commensurate;

(4) The legal entity has a share of the profits or losses from the farming operation commensurate with the legal entity's contributions to the operation; and

(5) The legal entity makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the legal entity's claimed share of the farming operation.

(b) If any partner, stockholder, or member fails to meet the requirements in paragraph (a)(2) of this section, any program payment and benefit subject to this subpart provided to the legal entity will be reduced by an amount commensurate with the ownership share held by that partner, stockholder, or member in the legal entity.

(c) For a farming operation conducted by a legal entity in which the capital, land, or equipment is contributed by the legal entity, such capital, land, or equipment:

(1) Must be contributed directly by the legal entity and must not be acquired as a loan made to, guaranteed, co-signed, or secured by:

(i) Any person, legal entity, or joint operation that has an interest in such farming operation, including the legal entity's members;

(ii) Such joint operation by any person, legal entity, or other joint operation that has an interest in such farming operation; or

(iii) Any person, legal entity, or joint operation in whose farming operation such legal entity has an interest, and

(2) If acquired as a result of a loan made to, guaranteed, co-signed, or secured by the persons, legal entities, or joint operations as defined, the loan must:

(i) Bear the prevailing interest rate and

(ii) Have a repayment schedule considered reasonable and customary for the area.

§ 1400.205 Trusts.

A trust will be considered to be actively engaged in farming with respect to a farming operation if:

(a) The trust independently and separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land;

(b) The income beneficiaries collectively make a significant contribution of active personal labor or active personal management, or a combination of active personal labor and active personal management to the farming operation. The combined interest of all the income beneficiaries providing active personal labor or active personal management, or a combination of active personal labor and active personal management, must be at least 50 percent;

(c) The trust has a share of the profits or losses from the farming operation commensurate with the legal entity's contributions to the operation;

(d) The trust makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the legal entity's claimed share of the farming operation;

(e) The trust has provided a tax identification number of the trust unless the trust is a revocable trust and the grantor is the sole income beneficiary; and

(f) The trust has provided a copy of the trust agreement to the county committee unless the trust is a revocable trust.

§ 1400.206 Estates.

(a) For 2 program years after the program year in which a person dies, the person's estate will be considered to be actively engaged in farming if:

(1) The estate, as a legal entity, makes a significant contribution of either:

(i) Capital, equipment, or land or

(ii) A combination of capital, equipment, or land; and

(2) The personal representative or heirs of the estate collectively make a significant contribution of either:

(i) Active personal labor or active personal management or

(ii) The combination of active personal labor and active personal management; and

(3) The estate has a share of the profits or losses from the farming operation commensurate with the legal entity's contributions to the operation;

(4) The estate makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the legal entity's claimed share of the farming operation; and

(5) The representative of the estate has provided a tax identification number for the estate and a copy of a court order, will, or other legal document that identifies the heir(s) and tax identification number(s) of the heir(s).

(b) After the period set forth in paragraph (a) of this section, the deceased person's estate will not be considered to be actively engaged in farming unless, on a case by case basis, the Deputy Administrator determines, for the purpose of obtaining program payments, that the estate has not been settled.

§ 1400.207 Landowners.

(a) A person or legal entity that is a landowner, including landowners with an undivided interest in land, making a significant contribution of owned land to the farming operation, will be considered to be actively engaged in farming with respect to such owned land, if the landowner:

(1) Receives rent or income for such use of the land based on the land's production or the operation's operating results;

(2) Has a share of the profits or losses from the farming operation commensurate with the landowner's contributions to the operation; and

(3) Makes contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with the landowner's claimed share of the farming operation.

(b) A landowner also includes a member of a joint operation if the joint operation holds title to land in the name of the joint operation and if the joint operation or its members submit adequate documentation to determine that, upon dissolution of the joint operation, the title to the land owned by the joint operation will revert to such member of such joint operation.

§ 1400.208 Family members.

(a) Notwithstanding the provisions of §§ 1400.201 through 1400.206, with respect to a farming operation conducted by persons, a majority of whom are family members, an adult family member who makes a significant contribution of active personal labor, active personal management, or a combination of active personal labor and active personal management will be considered to be actively engaged in farming if the adult family member meets the provisions in paragraph (b) of this section.

(b) An adult family member who elects to be considered actively engaged in farming under this section must:

(1) Have a share of the profits or losses from the farming operation commensurate with such person's contributions to the operation and

(2) Make contributions to the farming operation that are at risk for a loss, with the level of risk being commensurate with such person's claimed share of the farming operation.

§ 1400.209 Sharecroppers.

(a) Notwithstanding the provisions of §§ 1400.201 through 1400.206 of this part, with respect to a person who is a sharecropper, such person will be considered to be actively engaged in farming if the sharecropper meets the provisions of paragraph (b) of this section.

(b) A sharecropper who elects to be considered actively engaged in farming under this section must:

(1) Make a significant contribution of active personal labor to the farming operation;

(2) Have a share of the profits or losses from the farming operation commensurate with such person's contribution to the operation; and

(3) Make a contribution to the farming operation that is at risk for a loss, with the level of risk being commensurate with such person's claimed share of the farming operation.

§ 1400.210 Deceased and incapacitated persons.

If the person dies or is incapacitated before a determination is made that the person is ''actively engaged in farming,'' the representative of the deceased person's estate or the incapacitated person, or other person if necessary, must provide the determining authority information to verify that such person did make a conscious effort to and would have been determined to be actively engaged in farming if not for the person's death or incapacitation. If the person dies or is incapacitated after being determined to be ''actively engaged in farming,'' the determining authority will allow such determination to be in effect for that program year or fiscal year, as applicable. However, the following year such person or the person's estate must meet all necessary requirements in order to be determined to be ''actively engaged in farming'' for that year.

§ 1400.211 Persons and legal entities not considered to be actively engaged in farming.

Any person or legal entity that does not satisfy all of the applicable provisions of §§ 1400.201 through 1400.210 and a landowner who rents land to a farming operation for cash or a crop share guaranteed as to the amount of the commodity will not be considered to be actively engaged in farming with respect to the farming operation.

§ 1400.212 Growers of hybrid seed.

The existence of a hybrid seed contract for a person or legal entity will not be taken into account when making an actively engaged in farming determination with respect to such person or legal entity. However, such person or legal entity must satisfy all other applicable provisions of this part.

§ 1400.213 Military personnel.

If a person is called to active duty in the military before a determination is made that the person is actively engaged in farming, the person may be considered to be actively engaged in farming if the determining authority determines that such person did make a conscious effort to, and would have been determined to be, actively engaged

in farming if the person would not have been called to active duty. If the person is called to active duty after being determined to be actively engaged in farming, such determination will remain in effect for the program year.

Subpart D—Cash Rent Tenants

§ 1400.301 Eligibility.

(a) Any tenant that is actively engaged in farming in accordance with the provisions of subpart C and conducts a farming operation in which the tenant rents the land for cash, for a crop share guaranteed as to the amount of the commodity, or by any arrangement in which the tenant does not compensate the landlord by cash or a crop share, and receives benefits, with respect to such land under a program specified in § 1400.1(a)(1) and (2) will not be eligible to receive any payment with respect to such cash-rented land unless the tenant independently makes a significant contribution to the farming operation of:

(1) Active personal labor or

(2) Significant contributions of both active personal management and equipment.

(b) If the equipment is leased by the tenant from:

(1) The landlord, then the lease must reflect the fair market value of the equipment leased with a payment schedule considered reasonable and customary for the area or

(2) The same person or legal entity that is providing hired labor to the farming operation, then the contracts for the lease of the equipment and for the hired labor must be two separate contracts.

(c) If the equipment is leased by the tenant from the landlord, or from the same person or legal entity that is providing hired labor to the farming operation, then the tenant must exercise complete control over the leased equipment during the entire current crop year. Complete control is defined as exclusive access and use by the tenant.

(d) If the cash rent tenant is a joint operation, then each member must make a significant contribution of active personal labor or active personal management as specified in § 1400.203(a)(1)(ii) to be considered eligible for the member's share of the program payments received by the joint operation on the cash rented land.

(e) If the cash rent tenant is a legal entity, then a significant contribution of active personal labor or active personal management must be made to the legal entity as specified in § 1400.204(a)(2) for the legal entity to be considered eligible for the program payments on the cash rented land.

Subpart E—Foreign Persons

§ 1400.401 Eligibility.

(a) Any person who is not a citizen of the United States or a lawful alien will be ineligible to receive payments, loans, and benefits, with respect to any commodity produced, or land set aside from production, on a farm that is owned or operated by such person unless such person is providing land, capital, and a substantial amount of active personal labor on such farm.

(b)(1) A corporation or other legal entity will be ineligible to receive payments, loans, and benefits if more than 10 percent of the ownership of the legal entity is held by persons who are not citizens of the United States or lawful aliens unless each foreign person who is a stockholder or other type of member provides a substantial amount of active personal labor in the production of crops on a farm owned or operated by such a legal entity. However, upon the written request of the legal entity, the Deputy Administrator may make payments in an amount determined by the Deputy Administrator to be representative of the percentage interest of the legal entity that is owned by citizens of the United States and lawful aliens or foreign stockholders or other type of member who provide a significant contribution of active personal labor in the production of crops on a farm owned or operated by such legal entity.

(2) In determining whether more than 10 percent of the ownership of a legal entity is held by persons who are not citizens of the United States or by lawful aliens, the ownership interest will be the higher of the amount of such interest on:

(i) The date the applicable program contract or agreement is executed by the legal entity or

(ii) Any other date prior to the final harvest date that is determined and announced by the Deputy Administrator to be normal in the area for the applicable program crop.

(3) A corporation or other legal entity must inform the county committee of any increase in such ownership that occurs after the applicable program contract or agreement is executed.

(4) In the event of an increase in such ownership after a payment, loan, or benefit has been made, the legal entity will refund such payment, loan, or benefit.

(5) Where there is only one class of stock or other similar unit of ownership, a person's or legal entity's percentage share of the limited partnership, corporation, or other similar legal entity will be based upon the outstanding shares of stock or other similar unit of ownership held by the person or legal entity as compared to the total outstanding shares of stock or other similar unit of ownership. If the limited partnership, corporation, or other similar legal entity has more than one class of stock or other unit of ownership, the percentage share of the limited partnership, corporation or other similar legal entity owned by a person or legal entity will be determined by the Deputy Administrator on the basis of market quotations. If market quotations are unavailable or so infrequent that they do not represent fair market value, such percentage share will be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value of such stock or other unit of ownership, including the various rights and privileges that are attributed to each such class.

(c) A citizen of the United States, lawful alien, or legal entity that is not subject to this part who is in lawful possession, through a lease or otherwise, of a farm owned by a person or legal entity who is subject to this part may receive a payment, loan, and benefit without regard to this part.

§ 1400.402 Notification.

(a) Any legal entity, whether foreign or domestic, that executes a program contract or agreement under which a payment, loan, or benefit may be available must provide written notification to the county committee in the county where the legal entity conducts its farming operation if:

(1) Any person, group of persons, legal entity, or group of legal entities holds more than a 10 percent interest in such legal entity; and

(2) Such person, group of persons, legal entity, or group of legal entities, in accordance with § 1400.401, are ineligible to receive a payment, loan, or benefit.

(b) Such written notification must include the name and social security number or taxpayer identification number of such a person or legal entity, if known, and of all persons and legal entities that hold an interest in the legal entity.

(c) The failure of the legal entity to provide this information will result in the ineligibility of the legal entity to receive any payment, loan, or benefit.

Subpart F—Average Adjusted Gross Income Limitation

§ 1400.500 Applicability.

(a) For the 2009 through 2012 crop, program, or fiscal years, a person or legal entity, other than a joint venture or general partnership, will not be eligible to receive, directly or indirectly, certain program payments or benefits described in § 1400.1 if the average adjusted gross income of the person or legal entity exceeds the amounts in paragraphs (b) through (d) of this section for the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by the Deputy Administrator.

(b) For 2009 through 2012 commodity programs set forth in § 1400.1, a person or legal entity with an average adjusted gross nonfarm income as defined in § 1400.3 that exceeds $500,000 will not be eligible to receive program payments or benefits as identified in § 1400.1.

(c) For 2009 through 2012 commodity programs set forth in § 1400.1, a person or legal entity that has an average adjusted gross farm income as defined in § 1400.3 that exceeds $750,000 will not be eligible to receive a direct payment and other payments made applicable by statute or regulation.

(d) For 2009 through 2012 conservation programs set forth in § 1400.1, a person or legal entity that has an average adjusted gross nonfarm income as defined in § 1400.3 that exceeds $1,000,000 will not be eligible to receive payments or benefits under conservation and related programs, and other programs made applicable by statute or regulation, unless:

(1) Not less than 66.66 percent of the of the average adjusted gross income of the person or legal entity is average adjusted gross farm income or

(2) This limitation may be waived on a case-by-case basis by the Administrator or NRCS Chief for the protection of environmentally sensitive land of special significance. Such a written waiver request must document that land within or adjacent to the producer's agricultural operation contains critical resources such as, but not limited to, threatened, endangered, or at-risk species; historical or cultural resources; unique wetlands; or critical groundwater recharge areas. In addition, the waiver request must either:

(i) Show that use of conservation program funding by an individual producer is critical to the success of a project that benefits multiple producers in a community, watershed, or other geographic area or

(ii) Achieve enduring conservation treatment through use of a long-term agreement that is greater than 15 years in duration or through use of a deed restriction on the land.

(e) Determinations made under this subpart with regard to conservation programs will be based on the year for which the conservation program contract or agreement is approved and the determination will apply for the entire term of the subject agreement or contract.

(f) Vendors that receive payment for technical services provided in conjunction with programs made subject to this subpart by regulation or statute, but who are not beneficiaries of the program, are not subject to this subpart for services that are of the type that are also performed by the Federal Government in connection with such programs.

(g) Payments to an escrow agent, or other legal entity of similar capacity in which the recipient is maintaining temporary custody of the funds for eventual disbursement to an eligible program participant, are not subject to this subpart so long as the party ultimately receiving the payment is eligible under this subpart.

(h) Payments to States, counties, political subdivisions and agencies thereof, and Indian tribes as defined in § 1400.3 are not subject to this subpart.

§ 1400.501 Determination of average adjusted gross income.

(a) Except as otherwise provided in this subpart, average adjusted gross farm income of a person or legal entity includes income or benefits derived from or related to the following:

(1) Production of crops, specialty crops, and unfinished raw forestry products;

(2) The production of livestock, including but not limited to, cattle, elk, reindeer, bison, horses, deer, sheep, goats, swine, poultry, fish and other aquaculture products used for food, honeybees, and products produced by, or derived from, livestock;

(3) The production of farm-based renewable energy;

(4) The sale, including the sale of easements and development rights, of farm, ranch, forestry land, water or hunting rights, or environmental benefits;

(5) The rental or lease of land or equipment, used for farming, ranching, or forestry operations, including water or hunting rights;

(6) The processing, packing, storing, shedding, and transporting of farm, ranch, and forestry commodities, including renewable energy;

(7) The feeding, rearing, or finishing of livestock;

(8) The sale of land that has been used for agriculture;

(9) Any payment or benefit, including benefits from risk management practices, crop insurance indemnities, and catastrophic risk protection plans;

(10) Payments and benefits authorized under any program made applicable to this subpart by statute or regulation;

(11) Any other activity related to farming, ranching, or forestry, as determined by the Deputy Administrator; and,

(12) Any income reported on the Schedule F or other schedule used by the person or legal entity to report income from farming, ranching, or forestry operations to the Internal Revenue Service.

(b) For the specific purpose of determining the average adjusted gross farm income under § 1400.500(d)(1), and in addition to § 1400.501(a), the average adjusted gross farm income of a person or legal entity includes income or benefits derived from the following:

(1) The sale of equipment to conduct farm, ranch, or forestry operations and

(2) The provision of production inputs and services to farmers, ranchers, foresters, and farm operations.

(c) Except as otherwise provided in this subpart, adjusted gross income means:

(1) For a person filing a separate tax return, the amount reported as ''adjusted gross income'' on the final federal income tax return for the person for the applicable tax year;

(2) For a person filing a joint tax return, the amount reported as ''adjusted gross income'' on the final federal income tax return for the applicable tax year unless a certified statement is provided by a certified public accountant or attorney specifying the manner in which such income would have been declared and reported if the persons had filed two separate returns and that this calculation is consistent with the information supporting the filed joint return;

(3) For a corporation, including a subchapter S corporation, the total reported ''taxable income'' as reported to the Internal Revenue Service plus the amount of the charitable contributions as reported on the final federal income tax return for the applicable tax year;

(4) For a tax exempt legal entity, the ''unrelated business taxable income'' of the legal entity as reported to the Internal Revenue Service on the final federal income tax return, less any other income CCC determines to be from non-commercial activities;

(5) For a limited liability company, limited partnership, limited liability partnership, or similar type of

organization, the income from trade or business activities plus the amount of guaranteed payments to the members as reported to the Internal Revenue Service on the final federal income tax return for the applicable tax year; and

(6) For an estate or trust, the adjusted total income plus charitable deductions as reported to the Internal Revenue Service on the final federal income tax return for the applicable tax year, or the amount of net increase in the estate's or trust's value resulting from its business or investment interests.

(d) For purposes of applying this subpart and calculating the 3-year average referenced in § 1400.500, that average will be for the adjusted gross income for the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by CCC. For a legal entity that is not required to file a federal income tax return, or a person or legal entity that did not have taxable income in one or more tax years, the average will be the adjusted gross income, including losses, averaged for the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by CCC. A new legal entity will have its adjusted gross income averaged only for those years of the base period for which it was in business; however, a new legal entity will not be considered ''new'' to the extent it takes over an existing operation and has any elements of common ownership or interests with the preceding legal entity, or with persons or legal entities with an interest in the ''old'' legal entity. When there is such commonality, income of the ''old'' legal entity will be averaged with that of the ''new'' legal entity for the base period.

§ 1400.502 Compliance and enforcement.

(a) To comply with the average adjusted gross income limitation, a person or legal entity, including all interest holders in a legal entity, general partnership, or joint venture, must provide annually the following as required by CCC:

(1) A certification in the manner prescribed by CCC from a certified public accountant or attorney that the average adjusted gross income of the person or legal entity does not exceed the applicable limitation;

(2) A certification from the person or legal entity that the average adjusted gross income of the person or legal entity does not exceed the applicable adjusted gross income limitations;

(3) The relevant Internal Revenue Service documents and supporting financial data as requested by CCC. Supporting financial data may include State income tax returns, financial statements, balance sheets, reports prepared for or provided to another Government agency, information prepared for a private lender, and other credible information relating to the amount and source of the person's or legal entity's income; or

(4) Authorization for CCC to obtain tax data from the Internal Revenue Service for purposes of verification of compliance with this subpart.

(b)(1) All persons and legal entities are subject to an audit by FSA of any information submitted in accordance with this subpart. As a part of this audit, income tax returns may be requested, and if requested, must be supplied by all related persons and legal entities.

(2) In addition to any other requirement under any Federal statute, relevant Federal income tax returns and documentation must be retained a minimum of two years after the end of the calendar year corresponding to the year for which payments or benefits are requested.

(c) Failure to provide necessary and accurate information to verify compliance, or failure to comply with this subpart's requirements, will result in ineligibility for all program benefits subject to this subpart for the year or years subject to the request.

§ 1400.503 Commensurate reduction.

(a) Any program payment or benefit subject to this subpart provided to a legal entity, general partnership, or joint venture will be reduced by an amount commensurate with the direct and indirect ownership interest in the legal entity, general partnership, or joint venture of each person or legal entity determined to have an average adjusted gross income in excess of the applicable limitation under the standards provided elsewhere in this subpart for the direct recipient of such payments.

(b) Ownership interest in a legal entity will be reviewed to the fourth level of ownership, as specified in § 1400.105, to determine whether a commensurate reduction is applicable and the extent of such reduction. If an ownership interest is not held by a person in the fourth level of ownership in a legal entity, no payment or benefit will be made with respect to such interest.

Signed in Washington, DC, on December 19, 2008.

Glen L. Keppy,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. E8–30764 Filed 12–23–08; 11:15 am]

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1412

RIN 0560–AH84

Direct and Counter-Cyclical Program and Average Crop Revenue Election Program

AGENCY: Commodity Credit Corporation, Agriculture.

ACTION: Final rule.

SUMMARY: This rule implements the provisions of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) regarding the direct and counter-cyclical payment program (DCP) for the 2008 through 2012 crop years as well as Average Crop Revenue Election (ACRE) program payments for the 2009 through 2012 crop years. The 2008 Farm Bill further authorizes payments, with some changes, that were previously authorized under the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill) regarding direct and counter-cyclical payments for the crop years 2002 through 2007. The payments provide income support to producers of eligible commodities and are based on historically-based acreage and yields and do not depend on the current production choices of the farmer. In general, the 2008 Farm Bill provides payments to eligible producers of covered commodities and peanuts and beginning in 2009, pulse crops as well. Additionally, the 2008 Farm Bill provides for the establishment of a yield for each farm for any designated oilseed or eligible pulse crop for which a payment yield was not established under the 2002 Farm Bill.

DATES: *Effective Date:* December 23, 2008.

FOR FURTHER INFORMATION CONTACT: Salomon Ramirez, Director, Production, Emergencies and Compliance Division, United States Department of Agriculture (USDA), Stop 0517, 1400 Independence Ave, SW., Washington, DC 20250–0517; phone: (202) 720–7641; e-mail: *Salomon.Ramirez@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Direct and Counter-Cyclical Program and Average Crop Revenue Election Program

For crop years 2002 through 2007, pursuant to the 2002 Farm Bill (Pub. L.

107–171), wheat, corn, barley, grain sorghum, oats, upland cotton and rice, (the same crops that were previously eligible for fixed annual Production Flexibility Contract (PFC) payments for producers under prior law) oilseed crops, including soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, and peanuts were crops eligible for a fixed direct payment. (PFC payments were based on historical yields and acreage. Direct payments were received whether or not a crop was planted, and did not depend on what crop was planted, (except for fruit and vegetable restrictions)). The 2008 Farm Bill further authorizes these types of direct payments for the 2008 through 2012 crop years, with some changes, and adds pulse crops beginning with the 2009 crop year. Counter-cyclical payments (counter-cyclical payments are similar to the deficiency payments authorized under the earlier Acreage Reduction Program (ARP), which mandated strict acreage limitations and mandatory acreage idling or set-aside requirements) were authorized for the 2002 through 2007 crop years pursuant to the 2002 Farm Bill for these same crops. Under the 2008 Farm Bill, peanuts continue to be eligible for direct and counter-cyclical payments, and continue to have slightly different statutory requirements than for other crops.

Base Acres and Payment Yields

Section 1001 of the 2008 Farm Bill provides that the base acres and yields established by the 2002 Farm Bill that were effective September 30, 2007, will constitute the base acres and yields for the 2008 through 2012 crop years. The 2008 Farm Bill, however, requires adjustments to base acres for various reasons including, but not limited to, land no longer being devoted to agricultural uses. In addition to changes required by the 2008 Farm Bill, this rule provides that for the 2009 and subsequent crop years, crop acreage bases will be terminated with respect to land owned by Federal agencies. A transition provision is provided with respect to Federal land that was subject to a lease agreement entered into prior to the effective date of this rule. In such cases, the termination of the crop acreage bases will become effective when the lease expires.

As to payment yields, the 2008 Farm Bill requires that the payment yield for direct and counter cyclical payments under the 2002 Farm Bill, as in effect on September 30, 2007, be used. Section 1102 of the 2008 Farm Bill further requires the Secretary to establish a payment yield for direct and counter-cyclical payments for each farm for any designated oilseed or eligible pulse crop for which a payment yield was not established under the 2002 Farm Bill. This will involve a determination of an average yield per planted acre (designated oilseeds or pulse crop) on a farm for the 1998 through 2001 crop years, excluding any crop year in which the acreage planted was zero. An adjustment to the payment yield will equal the product of the average yield and the ratio resulting from dividing the national average yield for the 1981 through 1985 crops by the national average yield for the 1998 through 2001 crops. If the yield for a farm for any of the 1998 through 2001 crop years was less than 75 percent of the county yield for that designated oilseed or pulse crop, then the Secretary will assign a yield equal to 75 percent of the county yield to determine the average.

As with the 2002 Farm Bill, the 2008 Farm Bill specifies certain requirements to which the participant must agree to be eligible for direct and counter-cyclical payments. One such requirement is to effectively control noxious weeds and otherwise maintain the land in accordance with sound agricultural practices.

Sections 1101 and 1302 of the 2008 Farm Bill directed that base acres for covered commodities and peanuts would be reduced for land that has been subdivided and developed for multiple residential units or other non-farming uses if the size of the tracts and the density of the subdivision is such that the land is unlikely to return to the previous agricultural use, unless the producers on the farm demonstrate that the land remains devoted to commercial agricultural production or is likely to be returned to the previous agricultural use. Accordingly, these regulations detail the procedures under which land will be considered subdivided and developed for multiple residential units or other non-farming uses, whether such land remains devoted to commercial agricultural production, and whether such land is likely to be returned to the previous agricultural use.

Additionally, beginning with the 2009 crop year, except for farm owners who are socially disadvantaged or limited resource farmers, section 1101 of the 2008 Farm Bill, as amended by Public Law 110–398, specifically precludes issuance of payments to producers on farms that have 10 or less total base acres of covered commodities or peanuts.

Section 1107 of the 2008 Farm Bill authorizes the Secretary to carry out a pilot project to permit the planting of cucumbers, green peas, lima beans, pumpkins, snap beans, sweet corn, and tomatoes grown for processing on base acres in certain States during each of the 2009 through 2012 crop years. The number of base acres eligible during each crop year for the pilot project will be: 9,000 acres in Illinois, 9,000 acres in Indiana, 1,000 acres in Iowa, 9,000 acres in Michigan, 34,000 acres in Minnesota, 4,000 acres in Ohio, and 9,000 acres in Wisconsin. Contract and managerial requirements for this pilot project will be outlined in the regulations. Generally, to be eligible for selection to participate in the pilot project, the producers on a farm must demonstrate to the Secretary that they have entered into a contract to produce a crop of one of the specified commodities for processing and that they agree to produce the crop as part of a program of crop rotation on the farm to achieve agronomic and pest and disease management benefits. The base acres on a farm for a crop year will be reduced by an acre for each acre planted under the pilot program. Implementation of this program will commence with the 2009 crop year.

Additionally, subject to subsections (b) and (c) of section 1108 of the 2008 Farm Bill, for the purposes of determining the amount of the counter-cyclical payments to be paid to the producers on a farm for long grain rice and medium grain rice under section 1104 of the 2008 Farm Bill, base acres on the farm will be apportioned based on the percentage of acreage planted in the applicable State to long grain rice and medium grain rice during the 2003 through 2006 crop years. Section 1108 requires that the Secretary use the same total base acres, payment acres, and payment yields established with respect to rice under sections 1101 and 1102. Although the provisions of the 2008 Farm Bill are effective with the 2008 crop year, the election and apportionment cannot be performed before the 2009 crop year. We do not anticipate this being a problem, however, as counter-cyclical payments are not anticipated for rice in 2008. In the event that changes due to some circumstance, measures will be taken to implement the effectiveness of the change earlier.

In response to concerns regarding the sharing of contract payments and various forms of cash and share leases (such as traditional cash leases, traditional share leases, and combination or flex leases that have features of both traditional cash and traditional share leases), these regulations will clarify for the purpose of determining payments under these

regulations only, that for the 2009 through 2012 crop years, combination or ''flex'' leases will be viewed as cash leases. A combination or ''flex'' lease is one that provides for the greater of a determinable amount or determinable share of a crop or crop proceeds. For 2008, these leases are deemed to be share leases. For 2009, these leases are deemed cash leases.

ACRE

As an alternative to receiving counter-cyclical payments, section 1105 of the 2008 Farm Bill provides that ACRE is a farm program option for all covered commodities and peanuts that is available during each of the 2009, 2010, 2011, and 2012 crop years. A key feature of ACRE is to provide revenue protection based on several factors such as recent market prices as well as actual production and revenue of the covered commodity or peanuts at the farm and State levels. Unlike counter-cyclical payments, ACRE payments are not solely determined based on comparing national average prices to loan rates or other predetermined rates. When certain program standards are met, payments are based on the crop's actual planted acres and actual yield instead of historical yields and crop base acres, except when the crop's actual planted acres exceed the total base acreage on the farm.

Producers will give up a fixed amount of revenue, 20 percent of their direct payment, in exchange for a possible ACRE payment in a year when gross revenue is low, at which time payments could be greater than counter-cyclical payments. ACRE provides participating producers a revenue guarantee each year based on market prices and average yields for the respective commodities. The guarantee is based on State-level yields and national market prices, but payments are dependent upon State- and farm-level yields and national market prices. ACRE's policy objective is to assist farmers with managing the systemic risk of a decline in revenue of a crop over a short period of years.

However, once made on a farm, the election of ACRE is irrevocable, and the farm will remain in ACRE from the crop year in which participation was initially elected through the duration of the 2012 crop year. The election applies to all covered commodities and peanuts grown on the farm. If ACRE is not elected by all producers on the farm or if an ACRE election is not made, program participation defaults to the traditional DCP (provided DCP signup requirements are met).

Enrollment in an ACRE contract is a two-step process and first requires producers on a farm to elect the ACRE option. Election does not automatically enroll the producers or the farm, however. Following the irrevocable election, the producers will have the option to choose whether or not to participate in the annual ACRE contract.

For producers on farms that have elected and enrolled in ACRE, direct payments will be reduced by 20 percent such that they equal 80 percent of direct payments under the traditional direct payment program and marketing assistance loan rates will be reduced by 30 percent such that the loan rates will be equal to 70 percent of marketing loan rates.

ACRE payments equal the lesser of either:

ACRE state revenue guarantee minus state actual revenue
or
25% of ACRE state revenue guarantee
times
83.3 percent of the farm's acres planted to the covered commodity or peanuts (85 percent for the 2012 crop)
times
the farm's Olympic average yield (removes high and low yield) for the most recent 5 years divided by the State's ACRE benchmark yield.

The ACRE state revenue guarantee for a crop for a crop year equals the ACRE benchmark state yield per planted acre times ACRE price guarantee times 90 percent. The benchmark yield is Olympic average of state's yields for 5 most recent crop years. The price guarantee is the simple average of U.S. market year price for 2 most recent crop years. For example, for the purpose of establishing the guarantee for the 2009 crop year, the 2 most recent crop years are 2007 and 2008. For 2010 through 2012, the revenue guarantee cannot increase or decrease more than 10 percent from the guarantee for the previous crop year. The increase or decrease in the state revenue guarantee for a covered commodity or peanuts will be applicable to all ACRE program participants in a State, regardless of the year the participant first elected ACRE or enrolled. Separate state revenue guarantees are established for irrigated and non-irrigated land if a state's planted acres of a covered commodity or peanuts are at least 25 percent irrigated and at least 25 percent non-irrigated.

ACRE actual state revenue for a crop for a crop year equals state yield per planted acre times the national average market price (which equals higher of U.S. average cash price for the crop year or 70 percent of the crop's marketing assistance loan rate). While the statutory provisions regarding state revenue are not crystal clear, interpretation of the statute would not provide a reasonable result consistent with the nature of the statute unless it were read to lead to, in effect, a per acre amount.

The total number of planted acres that receive an ACRE payment cannot exceed a farm's total base acres for all covered commodities and peanuts on the farm. If a farm's total planted acres exceed the farm's total base acres, the farmer may choose which planted acres to enroll in ACRE.

ACRE payments are only available if a farm's actual revenue for the crop is less than the farm's ACRE benchmark revenue for that crop year. A farm's actual revenue for a crop equals the farm's actual yield times the U.S market year price for the crop for the crop year. A farm's ACRE benchmark revenue equals:

(Olympic average of farm's yields for the 5 most recent crop years
times
ACRE guarantee price)
plus
per acre crop insurance premium paid by the farmer for the crop for the crop year.

Producers electing the ACRE option and enrollment, as a condition of payment eligibility, must report production of reported acreage of covered commodities and peanuts on the farm no later than the crop reporting date for the crop in the year following the year the crop was reported as planted for harvest. The regulations specify the information and documentation requirements for these production reports.

The 2008 Farm Bill provides a $65,000 per person or legal entity payment limit for counter-cyclical payments, a reduced direct payment limit for participants in the ACRE program to reflect the amount the direct payment is reduced as a condition to participate in ACRE, and a limit in the amount of counter-cyclical and ACRE payments that reflect the $65,000 limit plus the amount that the direct payment limit is reduced. The counter-cyclical limits and ACRE limits are combined for those producers who participate in ACRE because producers are eligible to receive the counter-cyclical payments on one farm and the ACRE payments on a separate farm.

FSA Notifications of Farm Bill Provisions

The following provides information regarding the notification processes FSA has undergone to ensure that farm owners are aware of the provisions of the 2008 Farm Bill and that participants have all applicable information available on record at FSA to assist them in making participation elections.

Date	FSA action
June 4, 2008	Issued a DCP Notice to State and County Offices to prepare for implementation of the 2008 Farm Bill. The notice: • Provided an overview of the 2008 Farm Bill as it relates to 2008 through 2012. • Compared 2008 through 2012 DCP provisions and covered commodities with provisions effective for 2007 under the 2002 Farm Bill. • Clarified statutory definitions of long grain and medium rice. • Announced the inclusion of pulse crops as a covered commodity in 2009. • Discussed provisions for base acre adjustments permitted under the 2008 Farm Bill and explained how payment yields would be determined. • Discussed the percent of base acres used to calculate direct payments for each year under the 2008 Farm Bill. • Announced the direct payment rates and target prices for the 2008 through 2012 years. • Stated the payment limitations applicable to direct and counter cyclical payments. • Discussed the availability of the option to elect participation in the ACRE program starting with the 2009 crop year. • Announced planting flexibility as it existed under the 2002 Farm Bill, the 2008 Farm Bill, and the availability of a Planting Transferability Pilot Project for certain crops and States beginning in 2009. • Discussed compliance provisions of DCP. • Announced the prohibition of DCP and ACRE payments to producers on farms having 10 or less base acres. • Discussed how policy is being developed to address how base acres will need to be reduced when land has been subdivided and developed for multiple residential units or other nonfarming uses. • Announced the direct payment rates and target prices for the 2008 through 2012 years. • Stated the payment limitations applicable to direct and counter cyclical payments. • Discussed the availability of the option to elect participation in the ACRE program starting with the 2009 crop year. • Announced planting flexibility as it existed under the 2002 Farm Bill, the 2008 Farm Bill, and the availability of a Planting Transferability Pilot Project for certain crops and States beginning in 2009. • Discussed compliance provisions of DCP.
June 24, 2008	Issued a DCP Notice Concerning the 2008 DCP and Availability of Software. The notice: • Announced the 2008 DCP enrollment period. • Outlined the provisions that differentiate 2007 DCP from 2008 DCP. • Provided information regarding a revised CCC–509 and CCC–509 Appendix, and the need for their use in 2008 signup. • Discussed the availability of 2008 DCP Contract software. • Instructed FSA offices to publicize DCP provisions using all available means. • Announced the availability of 2008 advance direct payments. • Issued clarification for handling DCP contracts for farms having 10 or less base acres (prior to the amendment in Public Law 110–398). • Issued a notice regarding establishing fruit and vegetable (FAV) and Wild Rice Double-Cropping Regions.
June 27, 2008	Issued a notice in the **Federal Register** announcing implementation of DCP provisions for the 2008 crop year based on the current regulation in 7 CFR part 1412, Direct and Counter-cyclical Program, except as otherwise noted in the Notice and as otherwise required by the 2008 Farm Bill.

Signup Fees and Enrollment Deadlines

As provided in this rule, a signup deadline of June 1 has been established. Under the 2002 Farm Bill DCP provisions, a $100 fee was assessed if a participant did not sign a DCP contract by June 1 of the crop year. For the 2008 crop year, this fee did not apply. Instead, a final signup deadline of September 30, 2008, applied. For the 2009 and subsequent crop years, a final enrollment deadline of June 1 will apply and there will be no late enrollment period or fee. Producers interested in participating must complete enrollment of the farm by June 1 of the applicable crop year.

Prior to DCP and PFC, producers were required to decide whether to annually enroll in Acreage Reduction Program contracts and under those contracts there were defined signup periods that often closed much earlier than June 1. In other words, producers generally did not have an entire contract period to enroll or enroll late and pay a late filed fee. In some respects, a ''late-file'' enrollment period ending later in a contract year actually caused FSA and producers more problems because many producers who thought they had enrolled often had not. Further, a later enrollment deadline or ''late-file'' enrollment period raised questions of program integrity because compliance activities could not be performed during the contract period on farms that were not yet enrolled. Additionally, it has been determined that an enrollment deadline of June 1 is necessary because of the complexities involved in administering new payment limitation provisions which provide for attribution of payments to individuals within entities. Therefore, for the 2009 and each of the subsequent crop years, an enrollment deadline of June 1 of each such year will apply and all producers interested in annually participating must enroll by June 1 of such year.

Payments

Payments in the programs covered in this part are subject to statutory changes in conditions, rates, limitations, and eligibilities. Under a separate rulemaking, CCC will publish changes relevant to payment limitations.

Summary

In summary, FSA has, in administering the provisions of the 2008 Farm Bill, utilized available means to ensure that farm owners and operators have all necessary information from FSA that FSA is capable of providing to them, and in such a manner that owners can make educated decisions when determining appropriate DCP base and yield elections for a farm. As was the case with the 2002 Farm Bill, the 2008 Farm Bill explicitly sets forth many of the terms and provisions of the DCP. Accordingly, administration of the program is subject to little variation or flexibility from the statutory authority.

Notice and Comment

These regulations are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553), as specified in section 1601(c) of the 2008 Farm Bill, which requires that the regulations be promulgated and administered without regard to the notice and comment provisions of section 553 of title 5 of the United States Code or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking.

Executive Order 12866

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866 and, therefore, OMB reviewed this final rule. A cost benefit assessment of this rule is summarized below and is available from the contact listed above.

Cost Benefit Analysis Summary

The underlying policy structure for the 2008 Farm Bill is largely unchanged from the policy structure for the 2002 Farm Bill. The 2008 Farm Bill continues planting flexibility, continues marketing assistance loan provisions at higher levels (for some crops in some years. The net fiscal impacts of the changes made by the 2008 Farm Bill and implemented by this rule are estimated to be as shown in the following table:

AVERAGE ANNUAL CHANGE IN GOVERNMENT OUTLAYS BY PROGRAM, FISCAL YEARS 2008–2012

Program	Average annual outlay change (billion dollars)
Direct Payments	$ −0.484
Counter-cyclical Payments	−0.043
ACRE Payments	1.014
Total	0.487

Direct and counter-cyclical payments will increase farm income, but will have little impact on planting decisions because these payments are decoupled from the production decisions of individual farmers. These benefits are paid on historically-based acreage and yields and do not depend on the current production choices of the farmer. Direct payments and counter-cyclical payments were assumed in this analysis to have no impact on production. Direct payments are projected to average $4.749 billion in fiscal years (FY) 2008 through 2014 for crop years 2008 through 2012. These payments represent an decrease of about $0.484 billion each crop year compared with direct payments issued under the 2002 Farm Bill. Counter-cyclical payments are projected to average $0.089 billion in FY 2008 through 2014 for crop years 2008 through 2012. These payments represent a decrease of $0.043 billion compared with counter-cyclical payments under the 2002 Farm Bill. ACRE payments are projected to average $1.014 billion each crop year.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act because CCC is not required to publish a notice of proposed rulemaking for this rule.

Environmental Review

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. After a thorough environmental review, FSA has determined that the changes to the program authorized by the 2008 Act and promulgated by this final rule, are considered categorically excluded from further environmental review as evidenced by the completion of an environmental evaluation (7 CFR 799.10(b)(2)(xvi)). Therefore, no environmental assessment or environmental impact statement shall be prepared on this rule. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

This rule has been reviewed under Executive Order 12988. This rule is not retroactive and it does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal government or the private sector. In addition, CCC was not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Section 1601(c)(3) of the 2008 Farm Bill requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (SBREFA), which allows an agency to forgo SBREFA's usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. These regulations affect the incomes of an extraordinarily large number of agricultural producers. In any event, section 1601(c)(3) provides cause. Accordingly, this rule is effective upon the date of filing for public inspection at the Office of the **Federal Register**.

Federal Assistance Programs

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Direct and Counter-Cyclical Program, 10.055.

Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

CCC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 1412

Cotton, Feed grains, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

■ For the reasons discussed above, revise 7 CFR part 1412 to read as follows:

PART 1412—DIRECT AND COUNTER-CYCLICAL PROGRAM AND AVERAGE CROP REVENUE ELECTION PROGRAM FOR THE 2008 AND SUBSEQUENT CROP YEARS

Subpart A—General Provisions

Sec.

Subpart B—Establishment of Base Acres for a Farm for Covered Commodities

Subpart C—Establishment of Yields for Direct and Counter-Cyclical Payments

Subpart D—Direct and Counter-Cyclical Program Contract and ACRE Program Contract Terms and Enrollment Provisions for Covered Commodities and Peanuts for 2008 Through 2012

Subpart E—Financial Considerations Including Sharing Payments

Subpart F—Contract Violations and Reduction in Payments

Subpart G—Average Crop Revenue Election (ACRE) Program

Authority: 7 U.S.C. 7911–7918, 7951–7956, 8711–8719, 8751–8756, and 8781; and 15 U.S.C. 714b and 714c.

Subpart A—General Provisions

§ 1412.1 Applicability, statutory changes, interest, and contract provisions.

This part governs: How base acres and farm program payment yields are established or adjusted for the purpose of calculating direct and counter-cyclical payments for wheat, corn, grain sorghum, barley, oats, upland cotton, rice, peanuts, soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, pulse crops, and other designated oilseeds as determined and announced by the Commodity Credit Corporation (CCC), for the years 2008 through 2012; the month when producers on a farm may enter into annual Direct and Counter-cyclical Program (DCP) or Average Crop Revenue Election (ACRE) program contracts with CCC for each of the years 2008 through 2012, as applicable; and the peanut crop acreage bases and yields in order to receive 2008 through 2012 direct and counter-cyclical payments. Payments otherwise provided for in this part are subject to changes made by statute in rates, conditions, and eligibility notwithstanding any contract made under this part. However, any such modification may, as determined by the Deputy Administrator, allow producers the opportunity to withdraw from the contract. Also, if any refund comes due to CCC under this part, interest will be due from the date of the CCC disbursement except as determined by the Deputy Administrator. The provisions of this section will apply notwithstanding any other provision of this or any other part. In order to receive payment under this part a participant must comply with the regulations in this part and any additional requirements imposed by the program contract.

§ 1412.2 Administration.

(a) The program is administered under the general supervision of the Executive Vice-President, CCC, and will be carried out by Farm Service Agency (FSA) State and county committees (State and county committees).

(b) State and county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee may take any action required by the regulations of this part that the county committee has not taken. The State committee will also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee will preclude the Executive Vice President, or the Deputy Administrator, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator has the authority in individual cases to authorize State and county committees to waive or modify deadlines (except statutory deadlines) and other non-statutory requirements, in cases where lateness or failure to meet such other requirements does not adversely affect operation of the program. Producers and participants have no right to seek an exception under this provision. The Deputy Administrator's refusal to consider cases or circumstances or decisions not to exercise this discretionary authority under this provision will not be considered an adverse decision and is not appealable.

(f) A representative of CCC may execute the FSA forms entitled ''Direct

and Counter-Cyclical Program Contract'' and ''Average Crop Revenue Election Program Contract'' only under the terms and conditions determined and announced by the Executive Vice President, CCC. Any contract that is not executed in accordance with such terms and conditions, including any purported execution prior to or after the dates authorized by the Executive Vice President, CCC, is null and void and will not be considered to be a contract between CCC and the operator or any other producer on the farm.

§ 1412.3 Definitions.

The definitions set forth in this section are applicable for all purposes of administering the DCP. The terms defined in part 718 of this title and part 1400 of this chapter are also applicable, except where those definitions conflict with the definitions set forth in this section.

Where there is a conflict or a difference in definitions specified in this part and those that apply to the Average Crop Revenue Election (ACRE) program specified in subpart G of this part, the regulations of subpart G of this part will apply to the ACRE program.

Average Crop Revenue Election (ACRE) means the program authorized by section 1105 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8715) according to subpart G of this part. Participation in the ACRE program requires a two-step process by the producer, specifically step 1 an election according to subpart G of this part followed by step 2 enrollment according to this part.

Base acres means the number of acres established with respect to a covered commodity and peanuts on a farm pursuant to sections 1101 and 1302 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7911) as in effect on September 30, 2007, subject to any adjustment in accordance with subpart B of this part.

Commercial agricultural production means the propagation and raising of agricultural products for commercial sale or barter having gross receipts or sales annually in excess of $1,000. The term includes pastures and land devoted to approved conserving uses.

Considered planted means acreage approved as prevented planted in accordance with § 718.103 of this title or the acreage considered planted to a covered commodity pursuant to § 1412.48.

Contract means the CCC-approved standard, uniform forms and appendixes specified by CCC that constitute the agreement for participation in the Direct and Counter-Cyclical Program or ACRE program, as applicable.

Contract year means the particular year of the particular contract based on the compliance period for the contract. The compliance year will run from October 1 to the following September 30 and will have the same name as the corresponding fiscal year. For example, the 2009 contract year will be October 1, 2008, through September 30, 2009, and that year will be considered, too, the 2009 crop year. The contract for the 2009 crop year will be considered the contract for the 2009 crop. The same references will apply to all other years.

Counter-cyclical payment means a payment made to eligible producers on a farm in accordance with subpart E of this part for covered commodities and peanuts.

Covered commodity means wheat, corn, grain sorghum, barley, oats, upland cotton, long grain rice, medium grain rice, soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, pulse crops, and other oilseeds as determined by the Secretary.

Crop year means the relevant contract year. For example, the 2009 crop year is the year that runs from October 1, 2008, through September 30, 2009, and references to payments for that year refer to payments made under contracts with the compliance year that runs during those dates.

DCP cropland means DCP cropland as defined in part 718 of this title.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA, or a designee.

Developed means:

(1) Land has been approved by the local government for uses other than commercial agricultural uses; and

(2) Construction activity has begun to install any aspect of the development, for example utilities or roadways.

Direct payment means a payment made to eligible producers on a farm for peanuts and covered commodities in accordance with subpart E of this part.

Dry peas means Austrian, wrinkled seed, yellow, Umatilla, and green, excluding peas grown for the fresh, canning, or frozen market.

Effective price means the price calculated by the Secretary in accordance with § 1412.53 for covered commodities and peanuts to determine whether counter-cyclical payments are required to be made under that section for a crop year.

Excess base acres means the number of base acres of covered commodities and peanuts on the farm that exceed the farm's total DCP cropland.

Fiscal year means the year running from October 1 to the following September 30 and will be designated by the same calendar year in which it ends. For example, the 2009 fiscal year ends September 30, 2009.

Harvested means the producer has removed the crop from the field by hand, mechanically, or by grazing of livestock. The crop is considered harvested once it is removed from the field and placed in or on a truck or other conveyance or is consumed by livestock through the act of grazing. Crops normally placed in a truck or other conveyance and taken off the crop acreage, such as hay, are considered harvested when in the bale, whether removed from the field or not.

Marketing year means the 12-month period beginning in the calendar year the crop is normally harvested as follows:

(1) Barley, oats, and wheat: June 1–May 31;

(2) Canola, flax and rapeseed, lentils, and dry edible peas: July 1–June 30;

(3) Upland cotton, peanuts, and rice: August 1–July 31; and

(4) Corn, grain sorghum, soybeans, sunflowers, safflower, mustard, crambe, sesame, and chickpeas: September 1–August 31.

Oilseeds means a crop of soybeans, sunflower seed, rapeseed, canola, crambe, safflower, flaxseed, mustard seed, sesame seed, or, if determined and announced by CCC, another oilseed.

Payment acres means:

(1) Except as provided for in paragraph (2) of this definition, 85 percent of the base acres of a covered commodity or peanuts on a farm in accordance with § 1412.71 or subpart B of this part, as applicable, for which direct or counter-cyclical or ACRE payments are made.

(2) For each of the 2009 through 2011 crop years, 83.3 percent of the base acres for a covered commodity or peanuts on a farm in accordance with § 1412.71 or subpart B of this part, as applicable, for which direct or ACRE payments are made.

Payment yield means:

(1) For peanuts, the yield established pursuant to section 1302 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7911) as in effect on September 30, 2007.

(2) For covered commodities, the yield established in accordance with subpart C of this part for a farm for a covered commodity.

(3) For designated oilseeds or pulse crops, the yield established in accordance with subpart C of this part for a farm for a crop of a designated oilseed and pulse crop.

Processing means with respect to uses of a crop, non-fresh intended uses of crops enrolled in the project referred to in § 1412.48 for crops being grown pursuant to a contract for canning, pickling, frozen, juice, dry edible bean or pea, or such other uses deemed by CCC not to be fresh intended uses of crops mentioned in § 1412.48.

Pulse crop means dry peas, lentils, small chickpeas, and large chickpeas. Pulse crop bases will not generate direct payments and may only create counter-cyclical payments for the 2009 and subsequent crop years.

Subdivided means land has been approved or designated by the local government, or a unit thereof, for development or use as something other than commercial agricultural production or other non-agricultural use.

Supportive and necessary contractual documents means those documents including, but not limited to, those items substantiating the DCP contract such as leases, deeds, signatures of contract participants, owners, operators, and other tenant signatures, as determined by the Secretary.

Target price means, for peanuts, the price per ton; and for covered commodities, the price per bushel (or other appropriate unit in the case of upland cotton, rice, and other oilseeds) used to determine the payment rate for counter-cyclical payments.

§ 1412.4 Appeals.

A participant may obtain reconsideration and review of any adverse determination made under this part in accordance with the appeal regulations found at parts 11 and 780 of this title.

Subpart B—Establishment of Base Acres for a Farm for Covered Commodities

§ 1412.21 Election of base acres.

(a) Subject to adjustments in paragraph (b) of this section, base acres for covered commodities and peanuts are as defined in § 1412.3.

(b) No later than April 1, 2009, owners on a farm may establish base acres for pulse crops.

(1) Subject to the limitations in accordance with paragraph (d) of this section and § 1412.24, the base acres for pulse crops are equal to the sum of the following:

(i) The 4-year average of the acreage planted or prevented planted to the pulse crops during each of the 1998 through 2001 crop years for harvest, grazing, haying, silage, or other similar purposes, as determined by the Secretary, plus

(ii) The 4-year average of the acreage prevented from being planted to covered commodities during each of the 1998 through 2001 crop years, for reasons beyond the control of the producer, as determined by the Deputy Administrator.

(c) Subject to paragraph (d) of this section, the total acreage of a pulse crop on the farm calculated in accordance with paragraph (b) of this section must not exceed:

(1) The total acreage of cropland on the farm minus

(2) The total acreage for all covered commodities, peanut, and other pulse crops determined in accordance with paragraphs (a) and (b) of this section.

(d) If the calculation in paragraph (c) of this section results in a negative number, the pulse crop acreage on the farm for that crop year will be zero for the purposes of determining the 4-year average, in accordance with paragraph (b) of this section. Further, no prevented planning credit or other base credit may be allowed for a pulse crop for any planting activity for which base credit was allowed or will be allowed for another commodity.

(e) If the acreage planted or prevented from being planted was devoted to a different covered commodity in the same crop year (other than a covered commodity or pulse crops produced under an established practice of double-cropping), the owner may select the commodity to be used for base purposes for that crop year in determining the 4-year average, but may not select both the initial commodity and subsequent commodity.

(f)(1) An owner may increase the eligible acres of pulse crops on a farm by reducing the acreage of covered commodities and peanuts determined in accordance with paragraphs (a) and (b) of this section for one or more covered commodities on an acre-for-acre basis, except that the total base acres for pulse crops on the farm may not exceed the four-year average of pulse crops determined under paragraph (b) of this section.

(2) For the purpose of determining a 4-year average acreage for a farm under this section, any crop year in which a pulse crop was not planted or prevented planted will be excluded.

§ 1412.22 Failure to make pulse crop election.

If an owner fails to make an election for establishing pulse crop base acres on a farm by April 1, 2009, in accordance with § 1412.21, that owner will be deemed to have made the election to determine all base acres for all covered commodities and peanuts on the farm as set forth in § 1412.21.

§ 1412.23 Base acres and Conservation Reserve Program.

(a) Subject to paragraphs (b) and (c) of this section, eligible producers may, at the beginning of each fiscal year, adjust the base acres for covered commodities and peanuts with respect to the farm by the number of production flexibility contract acres or base acres protected by a Conservation Reserve Program contract entered into under section 1231 of the Food Security Act of 1985 (1985 Farm Bill, Pub. L. 99–198) that expired, was voluntarily terminated, or was early released on or after September 30, 2007.

(b) The total base acreage on a farm must not exceed the limitation of § 1412.24.

(c) Adjustments to base acreage on a farm in accordance with this section must be completed by no later than June 1 of the fiscal year following the fiscal year the conservation reserve program contract expired or was voluntarily terminated.

(d) For the fiscal year in which an adjustment to base acres under this section is made, the owner of the farm may elect to receive either direct payments and counter-cyclical payments or ACRE payments, as applicable, with respect to the base acres added to the farm under this section or a prorated payment under the conservation reserve contract, but not both.

§ 1412.24 Limitation of total base acreage on a farm.

(a) The sum of the following must not exceed the total DCP cropland acreage on the farm, plus approved double-cropped acreage for the farm:

(1) The sum of all base acres established for the farm in accordance with this part, plus

(2) Any cropland acreage on the farm enrolled in a Conservation Reserve Program contract in accordance with part 1410 of this chapter, plus

(3) Any cropland acreage on the farm enrolled in a wetland reserve program contract in accordance with part 1467 of this chapter, plus

(4) Any other acreage on the farm enrolled in a Federal conservation program for which payments are made in exchange for not producing an agricultural commodity on the acreage.

(b) The Deputy Administrator will give the owner of the farm the opportunity to select the covered commodity base acres or peanut base acres, against which the reduction required in this section will be made.

(c) In applying paragraph (a) of this section, CCC will take into account the

practice of double cropping on a farm, as determined by CCC.

Subpart C—Establishment of Yields for Direct and Counter-Cyclical Payments

§ 1412.31 Direct payment yields for covered commodities, except pulse crops.

(a) The direct payment yield for each covered commodity, except pulse crops, will be the payment yield established for the commodity for the farm in accordance with the regulations for covered commodities at part 1412 of this chapter in effect on January 1, 2008 (see 7 CFR part 1412, revised as of January 1, 2008).

(b) [Reserved]

§ 1412.32 Direct payment yield for designated oilseed and pulse crops.

(a) The direct payment yield for designated oilseeds for which a yield was not established by September 30, 2007, and pulse crops for the farm will be determined by multiplying the weighted average yield per planted acre for the crop on the farm, as determined in accordance with paragraph (b) of this section, times the ratio resulting from:

(1) The national average yield for the crop for the 1981 through 1985 crop years, as determined by CCC, divided by

(2) The national average yield for the crop for the 1998 through 2001 crop years, as determined by CCC.

(b)(1) The yield per planted acre for such designated oilseed for which a yield was not established by September 30, 2007, and for pulse crops on the farm, to be used for direct payment purposes, is calculated as follows:

(i) The sum of the production of the crop for the 1998 through 2001 crop years, as determined in accordance with paragraph (b)(2) of this section; divided by

(ii) The sum of the total planted acres of the crop for the 1998 through 2001 crop years.

(2) The production of the crop for each of the 1998 through 2001 crop years will be the higher of the following, except in a year in which the acreage planted to the crop was zero, in which case the production for the crop for such year will be zero:

(i) The total production for the applicable year based on the production evidence submitted in accordance with § 1412.34; or

(ii) The amount equal to the product of:

(A) The total planted acres for the crop, times

(B) 75 percent of the harvested average county yield for that crop determined, where practicable, by calculating the weighted 4-year average of the National Agricultural Statistics Service (NASS) harvested acreage yields for the crop using the 1998 through 2001 crop years.

(3) The NASS harvested acreage yield to be used in paragraph (b)(2) of this section will be based on:

(i) NASS harvested irrigated yield for the crop, if available, for producers who irrigated the crop in the applicable years;

(ii) NASS harvested non-irrigated yield for the crop, if available, for producers who did not irrigate the crop in the applicable years; or

(iii) NASS harvested blended yield for all acreage, regardless of whether or not the acres were irrigated or non-irrigated, for all crops in all counties for which the yields in paragraphs (b)(3)(i) and (ii) of this section are unavailable.

(4) If NASS harvested acreage yield data is not available, the Deputy Administrator will assign a yield to be used in paragraph (b)(2)(ii)(B) of this section.

§ 1412.33 Payment yield for counter-cyclical payments for covered commodities.

The counter-cyclical payment yield for covered commodities on the farm will be equal to the counter-cyclical payment yield established for the covered commodity on the farm that was effective September 30, 2007. Counter cyclical payment yields for designated oilseeds or eligible pulse crops for which direct payment yields were not established as of September 30, 2007, will be equal to the direct payment yield established in accordance with §§ 1412.32 or 1412.34, as applicable.

§ 1412.34 Submitting production evidence for establishing direct payment yields for oilseeds and pulse crops.

(a)(1) Reports of production evidence must be submitted when the owner elects to establish a direct payment yield for designated oilseeds for which a yield was not established by September 30, 2007, and pulse crops for the farm in accordance with § 1412.32.

(2) Producer or third-party certification will not be accepted as proof of production evidence.

(3) Reports of production evidence for designated oilseeds for which a yield was not established by September 30, 2007, and for pulse crops must be provided to the county committee of the county where the farm is administratively located, by farm and crop in such manner as required by CCC on a CCC-approved standard, uniform form designated by CCC.

(b)(1) When disposition of production has been through commercial channels, CCC may require the producer to furnish documentary evidence in order to verify the information provided on the report of production. Acceptable evidence may include, but is not limited to, such items as:

(i) Production approved by the county committee for Loan Deficiency Payments;

(ii) Commercial receipts;

(iii) Settlement sheets;

(iv) Warehouse ledger sheets;

(v) Elevator receipts or load summaries, supported by other evidence showing disposition, such as sales documents;

(vi) Evidence from harvested or appraised acreage, approved for FCIC or multi-peril crop insurance loss adjustment settlement; or

(vii) Other production evidence determined acceptable by the Deputy Administrator.

(2) Such production evidence must show:

(i) The producer's name,

(ii) The commodity,

(iii) The buyer or name of storage facility,

(iv) The date of transaction or delivery, and

(v) The quantity.

(c) When production of a designated oilseed for which a yield was not established by September 30, 2007, and pulse crops has been disposed of through non-commercial channels, then 75 percent of the county average yield as determined in accordance with § 1412.32(b)(4) will be used.

(d) CCC may verify the production evidence submitted with records on file at the warehouse, gin, or other entity which received or may have received the reported production.

§ 1412.35 Incorrect or false production evidence of oilseeds and pulse crops.

(a) If production evidence submitted in accordance with § 1412.34 is false or incorrect, as determined by the county committee, the county committee will determine whether the owner or producer submitting the production evidence for a farm acted in good faith or took action to defeat the purpose of the program.

(b)(1) If the county committee determines the production evidence submitted is false, incorrect, or unacceptable, and the owner or producer who submitted the evidence did not act in good faith or took any action to defeat or undermine the purpose of the program, the county committee will:

(i) Require a refund of all direct and counter-cyclical payments earned for the farm for the first year such payments were made;

(ii) For designated oilseeds or pulse crops, reduce both the direct and counter-cyclical payment yields to 75 percent of the county average yield as determined in accordance with § 1412.32(b)(4). That yield will then be reduced by the applicable direct payment yield factor in accordance with § 1412.32(a)(1); and

(iii) Subject to paragraph (a)(2)(i) of this section, regarding the first year of payments, require a refund of an amount equal to the following for designated oilseeds or pulse crops for each year the false, incorrect, or unacceptable yield was used to make payments under the contract:

(A) The sum of the direct and counter-cyclical payments made using the false, incorrect or unacceptable evidence, minus

(B) The sum of the direct and counter-cyclical payments that would have been made based on the yields established in paragraph (b)(1)(ii) of this section.

(2) Notwithstanding paragraph (b)(1) of this section, if the county committee determines that the production evidence submitted is false, incorrect, or unacceptable, and the owner or producer who submitted the evidence did not act in good faith or took action to defeat the purpose of the program, the Deputy Administrator may take further action, including but not limited to, any or all of the following:

(i) Make a further yield reduction for part or all of the designated oilseeds or pulse crops on the farm;

(ii) Make further payment reductions or refunds;

(iii) Determine that the owner or producer who submitted the evidence is ineligible for participation in future contracts unless the Deputy Administrator determines otherwise; or

(iv) Take other legal action.

(c) If the county committee determines the production evidence submitted is false, incorrect, or unacceptable, and the owner or producer who submitted the evidence acted in good faith and did not take action to defeat the purpose of the program, the county committee will:

(1) Correct the counter-cyclical yield for the applicable covered commodity or peanuts to equal the yield that would have been calculated in accordance with § 1412.33 based on accurate production evidence; and

(2) Require a refund of an amount equal to the following for each covered commodity and peanuts for each year the false, incorrect, or unacceptable yield was used to make payments under the contract:

(i) The sum of the direct and counter-cyclical payments made using the false, incorrect, or unacceptable evidence, minus

(ii) The sum of the direct and counter-cyclical payments that would have been made based on the yields established in paragraph (c)(1) of this section.

Subpart D—Direct and Counter-Cyclical Program and ACRE Program Contract Terms and Enrollment Provisions for Covered Commodities and Peanuts 2008 through 2012

§ 1412.41 Direct and counter-cyclical program contract or ACRE program contract.

(a) Except as specified in subpart G of this part, the following provisions apply to DCP and ACRE program contracts:

(1) With respect to Fiscal Year 2008 payments, CCC will offer to enter into an annual DCP contract with eligible producers of covered commodities and peanut producers through the date announced by CCC. With respect to Fiscal Years 2009 through 2012, CCC will offer to annually enter into a DCP or ACRE program contract with an eligible producer on a farm having base acres with respect to a covered commodity or peanuts, at the beginning of each such fiscal year 2009 through 2012 through June 1 of each such year.

(2)(i) Eligible producers must execute and submit a DCP or ACRE program contract and furnish supportive and necessary contractual documents to the county FSA office where the records for the farm are administratively maintained not later than June 1 of the fiscal year in which the direct and counter-cyclical or ACRE payments are requested.

(ii) Except as may otherwise be provided in statute for 2008, enrollment is not allowed after September 30 of the fiscal year in which the direct and counter-cyclical payments or ACRE program payments are requested.

(3) Under no circumstances will enrollment be permitted except as specified in this section. Contracts will not be approved unless all producers sharing in contract acreage with more than a zero share have submitted all applicable contracts and documentation necessary to make such approval, as determined by the Deputy Administrator. For those producers with an interest but a zero share of contract acreage, the contract will not be approved before all producers have signed the contract or furnished supportive and necessary contractual documents (such as cash leases in lieu of signing for a zero share). A contract not having all requisite signatures of producers having more than a zero share of contract acreage on or before the enrollment deadline will not be considered submitted to CCC for any purpose and will not be acted on or approved. Those contracts enrolled by a producer on or before June 1 that were not signed by other producers according to this section will be deemed withdrawn and will not be approved. Producers on a farm are solely responsible for ensuring that enrollment occurs.

(4) Eligible producers who elect to enter into a contract with CCC must enroll all base acres on the farm. Enrollment of fewer than all base acres on the farm is not allowed.

(b) Eligible producers may withdraw from a contract at any time on or before June 1 of the year of the contract provided all signatories to the contract, including CCC, agree to the withdrawal in writing. DCP contracts enrolled prior to the decision of producers on a farm to elect the ACRE option for a fiscal year are considered withdrawn as specified in § 1412.72. Producers electing the ACRE option according to § 1412.72(d) must subsequently decide whether or not to enroll the farm in an ACRE program contract in accordance with the rules of this part.

(c) All contracts expire on September 30 of the fiscal year of the contract unless:

(1) Withdrawn in accordance with paragraph (b) of this section;

(2) Terminated in accordance with paragraphs (d) or (e) of this section; or

(3) Terminated at an earlier date by mutual consent of all parties, including CCC.

(d) A transfer or change in the interest of an owner or producer in the farm or in acreage on the farm subject to a contract will result in the termination of the contract and a refund of all direct and counter-cyclical and ACRE payments issued for the farm. The contract termination will be effective on the date of the transfer or change. Successors to the interest in the farm or crops on the farm subject to the contract may enroll the farm in a new contract and assume all obligations under the contract, only after all payments previously issued for the farm have been refunded to CCC.

(e) In the event a farm reconstitution is completed of a properly enrolled farm or farms in accordance with part 718 of this title, FSA will issue notices to the operator and owners of record on a farm that all producers with an interest in the base acres on the farm must sign a new DCP or ACRE program contract and provide supporting documentation such as leases and other contractual supportive documents not later than September 30 of the fiscal year direct

and counter-cyclical or ACRE program payments are requested, after receiving written notification by the county committee indicating the reconstitution is completed. It is the responsibility of the operator and owners on a farm that producers with an interest in base acres are notified of the reconstitution and requirement for a new contract. If all producers have not signed the new contract by September 30, then no producers on the contract will be eligible for a direct or counter-cyclical payment or ACRE program payment for that farm for the year the contract was terminated.

§ 1412.42 Eligible producers.

(a) Producers eligible to enter into a contract are:

(1) An owner of a farm who assumes all or a part of the risk of producing a crop;

(2) A producer, other than an owner, on a farm with a share-rent lease for such farm, regardless of the length of the lease, if the owner of the farm enters into the same contract;

(3) A producer, other than an owner, on a farm who cash rents such farm under a lease expiring on or after September 30 of the year of the contract in which case the owner is not required to enter into the contract;

(4) A producer, other than an owner, on a farm who cash rents such farm under a lease expiring before September 30 of the year of the contract. The owner of such farm must also enter into the same contract; or

(5) An owner of an eligible farm who cash rents such farm and the lease term expires before September 30 of the year of the contract, if the tenant declines to enter into a contract for the applicable year. In the case of an owner covered by this paragraph, direct and counter-cyclical payments will not begin under the contract until the lease held by the tenant ends.

(b) A minor child will be eligible to enter into a contract only if one of the following conditions exist:

(1) The right of majority has been conferred upon the minor by court proceedings or statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which a surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

(c) The owner of the farm may be considered the ''producer'' if there is no other producer, but the owner could have shared in the crop had a crop been produced, but only if the farm otherwise meets all the requirements for payment.

§ 1412.43 Reconstitutions.

Farms will only be reconstituted in accordance with part 718 of this title.

§ 1412.44 Notification of base acres.

The operator and owners of record of a farm will be notified in writing of the number of base acres eligible for enrollment in a contract, unless such operator or owners of record of a farm requests in writing not to be furnished with the notice. The operator and owners of record are responsible for notifying all other producers of a farm of the notice.

§ 1412.45 Reducing or terminating base acreage.

(a)(1) Subject to the limitation in paragraph (a)(2) of this section, a permanent reduction of all or a portion of a farm's base acreage will be allowed when all owners of the farm execute and submit a written request for such reduction on a CCC-approved standard, uniform form designated by CCC to the FSA county office where the records for the farm are administratively maintained.

(2) A permanent reduction of all or a portion of a farm's base acres to negate or reduce a program violation is not allowed.

(b) When base acres on a farm are converted to a non-agricultural commercial or industrial use, the total base acres on the farm will be reduced accordingly regardless of the submission of a request for such reduction.

(c) The base acres of covered commodities and peanuts on a farm will be proportionately reduced when it is determined that the land has been subdivided and developed for multiple residential units or other nonfarming uses if, in the judgment of the county committee, the size of the tracts and the density of the subdivision is such that the land is unlikely to return to the previous agricultural use, unless either of the following applies:

(1) The producers on the farm demonstrate that the land remains devoted to commercial agricultural production or is likely to be returned to the previous agricultural use and such land has not been divided from the farm with a farm reconstitution performed according to part 718 of this title or

(2) A properly constituted or reconstituted farm contains sufficient land that has not yet been subdivided and developed for multiple residential units or other nonfarming uses, and the producers on the farm demonstrate that the land remains devoted to commercial agricultural production or is likely to be returned to the previous agricultural use.

(d)(1) Except as provided in paragraph (d)(2) of this section, for the 2009 and subsequent crop years, crop acreage bases will be not be established with respect to land owned by Federal agencies and any crop acreage base previously established with respect to such land will be terminated.

(2) Paragraph (d)(1) of this section will not apply to Federally-owned land that was subject to a lease agreement entered into prior to December 23, 2008 during the length of the lease agreement. Upon termination of such agreement, all crop acreage bases established with respect to Federally-owned land will be terminated. To the extent a lease contains an option to extend the terms of the lease, crop acreage bases will be terminated as of the date the original lease would expire without regard to any exercise of such an option.

(3) In the event a Federal agency transfers of ownership of land to another party, crop acreage bases will not be re-established with respect to such land.

§ 1412.46 Succession-in-interest.

(a) A succession in interest to a DCP or ACRE program contract is required if there has been a change in the operation of a farm, such as:

(1) A sale of land;

(2) A change of operator or producer, including a change in a partnership that increases or decreases the number of partners or changes who are partners;

(3) A foreclosure, bankruptcy, or involuntary loss of the farm;

(4) A change in producer shares to reflect changes in the producer's share of the crop(s) that were originally approved on the contract; or

(5) An other change determined by the Deputy Administrator to be a succession that will not adversely affect nor defeat the purpose of the program.

(b) A succession in interest to the contract is not permitted if CCC determines that the change:

(1) Results in a violation of the landlord-tenant provisions specified in § 1412.55; or

(2) Adversely affects or otherwise defeats the purpose of the program.

(c) If a producer who is entitled to receive direct and counter-cyclical payments dies, becomes incompetent, or is otherwise unable to receive the payment, CCC will make the payment in accordance with part 707 of this title.

(d) A producer or owner of an enrolled farm must inform the county committee of changes in interest in base acres on the farm not later than:

(1) August 1 of the fiscal year in which the change occurs if the change requires a reconstitution be completed in accordance with part 718 of this title or

(2) September 30 of the fiscal year in which the change occurs if the change does not require a reconstitution be completed in accordance with part 718 of this title.

(e) In any case in which either a direct or counter-cyclical payment has previously been made to a predecessor, such payment will not be paid to the successor, unless such payment has been refunded in full by the predecessor, in accordance with § 1412.41(d).

(f) The failure of the party eligible to succeed to the contract to do so will be considered a contract violation.

§ 1412.47 Planting flexibility.

(a) Any crop may be planted and harvested on base acreage on a farm, except as limited elsewhere in this section. Any crop may be planted on DCP cropland in excess of the base acreage on a farm.

(b) Base acreage may be hayed or grazed at any time.

(c) Planting perennial fruits, vegetables (except mung beans, and pulse crops), or wild rice, as determined by the Deputy Administrator, is prohibited on base acreage of a farm enrolled in a DCP or ACRE program contract. Harvesting non-perennial fruits, vegetables (except mung beans and pulse crops), or wild rice, as determined by the Deputy Administrator, is prohibited on base acreage of a farm enrolled in a DCP or ACRE program contract.

(d) Notwithstanding the provisions of paragraph (c) of this section, perennial fruits, vegetables, and wild rice may be planted on base acreage of a farm enrolled in a contract, and non-perennial fruits, vegetables, and wild rice may be harvested on base acreage of a farm enrolled in a contract if:

(1) A producer double-crops fruits, vegetables, or wild rice with a covered commodity or peanuts in any region described in paragraph (e) of this section, in which case direct and counter-cyclical payments will not be reduced for the planting or harvesting of the fruit, vegetable, or wild rice;

(2) The farm has a history of planting fruits, vegetables, or wild rice, as determined by CCC, in which case the payment acres for the farm will be reduced on an acre-for-acre basis; or

(3) The producer has a history of planting a specific fruit, specific vegetable, or wild rice, as determined by CCC, the producer may plant and harvest the specific fruit, specific vegetable, or wild rice for which the producer has a planting history, subject to the following:

(i) The acreage harvested must not exceed the simple average of the sum of acreage of the specific fruit, specific vegetable, or wild rice planted for harvest by the producer during the crop years 1991 through 1995 or 1998 through 2001, as designated by the producer, excluding any year in which the specific fruit, specific vegetable, or wild rice was not planted; and

(ii) The payment acres for the farm will be reduced on an acre-for-acre basis.

(e) Double-cropping for purposes of this section means planting for harvest fruits, vegetables, or wild rice on the same acres in cycle with a covered commodity or peanuts planted and harvested for peanuts, grain, or lint in a 12-month period under normal growing conditions for the region and being able to repeat the same cycle in the following 12-month period. For purposes of this part, the following counties have been determined to be regions having a history of double-cropping covered commodities or peanuts with fruits, vegetables, or wild rice. State committees have established the following counties as regions within their respective States:

Alabama

Baldwin, Barbour, Butler, Chambers, Chilton, Clarke, Covington, Cullman, Geneva, Greene, Houston, Jackson, Jefferson, Lee, Madison, Mobile, Montgomery, Randolph, Sumter, Talladega, Walker, and Washington.

Alaska

None.

Arizona

Cochise, Graham, Greenlee, LaPaz, Maricopa, Mohave, Pima, Pinal, and Yuma.

Arkansas

Ashley, Benton, Clay, Craighead, Crawford, Cross, Faulkner, Franklin, Greene, Independence, Jackson, Jefferson, Lee, Lincoln, Logan, Lonoke, Mississippi, Phillips, Pulaski, St. Francis, Sebastian, Woodruff, and Yell.

California

Alameda, Amador, Butte, Colusa, Contra Costa, Fresno, Glenn, Imperial, Kern, Kings, Madera, Merced, Riverside, Sacramento, San Benito, San Joaquin, Santa Clara, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Yolo, and Yuba.

Caribbean Office

None.

Colorado

Otero.

Connecticut

None.

Delaware

All counties.

Florida

All counties except Monroe.

Georgia

All counties.

Hawaii

None.

Idaho

None.

Illinois

Bureau, Calhoun, Cass, Clark, Crawford, DeKalb, Edgar, Effingham, Gallatin, Iroquois, Jersey, Kankakee, Lawrence, LaSalle, Lee, Madison, Marion, Mason, Monroe, Randolph, St. Clair, Tazewell, Union, Vermilion, White, and Whiteside.

Indiana

Allen, Bartholemew, Daviess, Gibson, Hamilton, Jackson, Johnson, Knox, LaGrange, Lake, LaPorte, Madison, Marion, Martin, Miami, Posey, Ripley, Shelby, Sullivan, Vandenberg, and Warrick.

Iowa

Kossuth, Mitchell, Palo Alto, and Winnebago.

Kansas

None.

Kentucky

Daviess.

Louisiana

Avoyelles, Franklin, Grant, Morehouse, Rapides, Richland, and West Carroll.

Maine

None.

Maryland

Baltimore, Calvert, Caroline, Carroll, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester.

Massachusetts

None.

Michigan

None.

Minnesota

Blue Earth, Brown, Carver, Chippewa, Cottonwood, Dakota, Dodge, Faribault, Fillmore, Freeborn, Goodhue, Houston, Kandiyohi, Le Sueur, Martin, McLeod, Meeker, Mower, Nicollet, Olmsted, Pope, Redwood, Renville, Rice, Scott, Sibley, Steele, Swift, Waseca, Wabasha, Watonwan, and Winona.

Mississippi

Adams, Calhoun, Carroll, Coahoma, Covington, DeSoto, George, Humphreys, Jefferson Davis, Lowndes, Madison, Marshall, Monroe, Montgomery, Prentiss and Rankin.

Missouri

Barton, Butler, Cape Girardeau, Dade, Dunklin, Jasper, Lawrence, Mississippi, New Madrid, Newton, Pemiscot, Ripley, Scott, and Stoddard.

Montana

None.

Nebraska

None.

Nevada

None.

New Hampshire

None.

New Jersey

Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Salem, Somerset, Sussex, and Warren.

New Mexico

Chaves, Curry, Dona Ana, Eddy, Hidalgo, Lea, Luna, Quay, Roosevelt, San Juan, and Sierra.

New York

Cayuga, Genesee, Livingston, Monroe, Ontario, Orange, Orleans, Suffolk, Wayne, and Wyoming.

North Carolina

Beaufort, Bertie, Bladen, Brunswick, Cabarrus, Camden, Carteret, Caswell, Catawba, Chatham, Chowan, Cleveland, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Franklin, Gaston, Gates, Granville, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lee, Lenoir, Lincoln, Martin, Mecklenburg, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stokes, Tyrell, Union, Wake, Warren, Washington, Wayne, Wilkes, Wilson, and Yadkin.

North Dakota

None.

Ohio

Champaign, Clermont, Fulton, Lucas, Miami, Morgan, Muskingum, Scioto, and Stark.

Oklahoma

Adair, Alfalfa, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Cleveland, Cotton, Custer, Delaware, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Haskell, Hughes, Jackson, Jefferson, Kay, Kingfisher, Kiowa, LeFlore, Logan, Love, McClain, McIntosh, Major, Marshall, Mayes, Muskogee, Noble, Nowata, Okmulgee, Osage, Pawnee, Payne, Pittsburg, Pottawatomie, Roger Mills, Rogers, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, Washita, Woods, and Woodward.

Oregon

Morrow and Umatilla.

Pennsylvania

Adams, Bucks, Centre, Chester, Clinton, Columbia, Cumberland, Delaware, Franklin, Indiana, Lancaster, Montgomery, Montour, Northumberland, Schuylkill, Synder, Union, and York.

Puerto Rico

None.

Rhode Island

None.

South Carolina

All counties.

South Dakota

None.

Tennessee

Bledsoe, Cannon, Chester, Cocke, Coffee, Crockett, Dickson, Dyer, Fayette, Gibson, Giles, Greene, Grundy, Hardeman, Haywood, Jefferson, Knox, Lake, Lauderdale, Lawrence, Lincoln, Madison, Maury, McNairy, Obion, Overton, Pickett, Putnam, Rhea, Robertson, Rutherford, Sumner, Unicoi, VanBuren, Warren, Washington, Wayne, White, Williamson, and Wilson.

Texas

Atascosa, Bailey, Baylor, Brooks, Cameron, Castro, Cochran, Cottle, Dallam, Dawson, Deaf Smith, Dimmit, Duval, Floyd, Foard, Frio, Gaines, Hale, Hartley, Haskell, Hidalgo, Hockley, Jim Wells, Kleberg, Knox, Lamb, LaSalle, Lubbock, Lynn, Maverick, Medina, Moore, Parmer, Presidio, San Patricio, Sherman, Starr, Swisher, Terry, Uvalde, Webb, Willacy, Wilson, Yoakum, and Zavala.

Utah

None.

Vermont

None.

Virginia

Accomack, Albemarle, Alleghany, Amelia, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Brunswick, Buchanan, Buckingham, Campbell, Caroline, Carroll, Charles City, Charlotte, Chesapeake, Chesterfield, Clarke, Craig, Culpeper, Cumberland, Dickenson, Dinwiddie, Essex, Fairfax, Fauquier, Floyd, Fluvanna, Franklin, Frederick, Giles, Gloucester, Goochland, Grayson, Greene, Greensville, Halifax, Hanover, Henrico, Henry, Highland, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Lee, Loudoun, Louisa, Lunenburg, Madison, Mathews, Mecklenburg, Middlesex, Montgomery, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Pulaski, Rappahannock, Richmond, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Southampton, Spotsylvania, Stafford, Suffolk, Surry, Sussex, Tazewell, Virginia Beach, Warren, Washington, Westmoreland, Wise, Wythe, and York.

Washington

Yakima.

West Virginia

None.

Wisconsin

Adams, Calumet, Columbia, Dane, Dodge, Fond du Lac, Green, Green Lake, Iowa, Kenosha, Milwaukee, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Trempealeau, Walworth, Washington, Waukesha, Waushara, and Winnebago.

Wyoming

None.

(f) Any acreage reduction required by paragraph (d) of this section will be applied beginning with the covered commodity or peanuts with lowest direct payment amount per acre until the acreage reduction amount is satisfied. Producers may agree to adjust the acre reduction between covered commodities and peanuts on the farm, only to the extent the total acre reduction amount does not change for the farm, and all producers affected by the adjustment agree to the adjustment in writing.

(g) For the purposes of this part, fruits, vegetables, and wild rice planted on base acreage of a farm under a DCP or ACRE program contract:

(1) Will be considered harvested at the time of planting, unless the producer pays a fee to cover the cost of a farm visit, in accordance with part 718 of this title, to verify that the fruit, vegetable, or wild rice has been destroyed before harvest, as determined by the Deputy Administrator, or

(2) Will not be considered as planted to a fruit, vegetable, or wild rice when reported by a producer on the farm with an intended use of green manure or forage, as determined by the Deputy Administrator, and a fee to cover the cost of a farm visit is paid by the producer, in accordance with part 718 of this title, to verify that the crop has not been harvested.

(h) Unless otherwise specifically included as a covered commodity in accordance with this part, fruits and vegetables include but are not limited to all nuts except peanuts, certain fruit-bearing trees and: Acerola (barbados cherry), antidesma, apples, apricots, aragula, artichokes, asparagus, atemoya (custard apple), avocados, babaco papayas, bananas, beans (except soybeans, mung, adzuki, faba, and lupin), beets—other than sugar, blackberries, blackeye peas, blueberries, bok spare choy, boysenberries, breadfruit, broccoflower, broccolo-cavalo, broccoli, brussel sprouts, cabbage, cailang, caimito, calabaza, carambola (star fruit), calaboose, carob, carrots, cascadeberries, cauliflower, celeriac, celery, chayote, cherimoyas (sugar apples), canary melon, cantaloupes, cardoon, casaba melon, cassava, cherries, chinese bitter melon, chicory, chinese cabbage, chinese mustard, chinese water chestnuts, chufes, citron, citron melon, coffee, collards, cowpeas, crabapples, cranberries, cressie greens, crenshaw melons, cucumbers, currants, cushaw, daikon, dasheen, dates, dry edible beans, dunga, eggplant, elderberries, elut, endive, escarole, etou, feijoas, figs, gai lien, gailon, galanga, genip, gooseberries, grapefruit, grapes, guambana, guavas, guy choy, honeydew melon, huckleberries, jackfruit, jerusalem artichokes, jicama, jojoba, kale, kenya, kiwifruit, kohlrabi, kumquats, leeks, lemons, lettuce, limequats, limes, lobok, loganberries, longon, loquats, lotus root, lychee (litchi), mandarins, mangos, marionberries, mar bub, melongene, mesple, mizuna, mongosteen, moqua, mulberries, murcotts, mushrooms, mustard greens, nectarines, ny Yu, okra, olallieberries, olives, onions, opo, oranges, papaya, paprika, parsnip, passion fruits, peaches, pears, peas, all peppers, persimmon, persian melon, pimentos, pineapple, pistachios, plantain, plumcots, plums, pomegranates, potatoes, prunes, pummelo, pumpkins, quinces, radiochio, radishes, raisins, raisins (distilling), rambutan, rape greens, rapini, raspberries, recao, rhubarb, rutabaga, santa claus melon, salsify, saodilla, sapote, savory, scallions, shallots, shiso, spinach, squash, strawberries, suk gat, swiss chard, sweet corn, sweet potatoes, tangelos, tangerines, tangos, tangors, taniers, taro root, tau chai, teff, tindora, tomatillos, tomatoes, turnips, turnip greens, watercress, watermelons, white sapote, yam, and yam yu choy.

§ 1412.48 Planting Transferability Pilot Project.

(a) Notwithstanding § 1412.47, for each of the 2009 and subsequent crop years, the Planting Transferability Pilot Project (Project) will permit, in accordance with the limitations and provisions of this section only, the planting of certain crops in certain States on base acres without violating the DCP or ACRE contract. Base acres on farms participating in the Project will be reduced an acre (or portion thereof) for every acre (or portion thereof) planted in the Project, for the year in which the farm is participating in the Project.

(b) Producers interested in participating in the Project must first be enrolled in either a DCP or ACRE program contract and submit an offer for participation in the Project accompanied by a copy of the contract mentioned in paragraph (f) of this section no later than March 1 of the fiscal year in which participation in the Project is desired. At the conclusion of the signup period, CCC will determine if it received more offers than the acreage limitation paragraph (e) of this section allows. If the offers exceed the acreage limitation in the State, CCC will conduct a lottery style selection process and approve offers for participation in the Project that will ensure that the number of base acres eligible for each year under the Project are not exceeded. In the event that CCC cannot approve an offer in its entirety, at CCC's discretion, CCC may give the producers the opportunity to enroll less acres in the Project. CCC will also notify producers of the results of the selection process. Under no circumstances can producers challenge either the selection process itself or the results via administrative appeal. Producers in each of the States mentioned in this section can elect to participate in the Project with their offer as accepted by CCC, or, if CCC elects to offer approval of part of an offer, participate with their offer as reduced by CCC, or the producers can elect not to participate in the Project.

(c) Signup for the Project will be conducted as announced by the Deputy Administrator.

(d) Under the Project, crops permitted on DCP base acres are cucumbers, green peas, lima beans, pumpkins, snap beans, sweet corn, and tomatoes. These crops eligible for participation in this Project must be grown for processing.

(e) The States and the number of base acres eligible during each crop year for the Project under paragraph (a) of this section are:

(i) 9,000 acres in Illinois,

(ii) 9,000 acres in Indiana,

(iii) 1,000 acres in Iowa,

(iv) 9,000 acres in Michigan,

(v) 34,000 acres in Minnesota,

(vi) 4,000 acres in Ohio, and

(vii) 9,000 acres in Wisconsin.

(f) To be eligible to participate in the Project, producers on a farm must do all of the following for the commodity specified in paragraph (d) of this section:

(i) Enter into a contract to produce the commodity for processing;

(ii) Agree to produce the crop as part of a program of crop rotation on the farm to achieve agronomic and pest and disease management benefits;

(iii) Report acreage and production of the crop according to § 1412.66 and provide evidence of disposition of the crop; and

(iv) File a notice of loss according to § 1412.67, if the crop is either prevented from being planted or is impacted by disaster after planting.

(g) If base acres are recalculated while a farm is participating in this Project, the planting and production of a crop of a commodity specified in paragraph (d) of this section on base acres for which a temporary reduction was made under this section will be considered to be the same as the planting and production of the covered commodity or peanuts that was reduced.

(h) Reports will be prepared for Congress to periodically evaluate the supply and price of fresh and processed fruits and vegetables and evaluate if producers of fresh fruits and vegetables are being negatively impacted or existing production capacities are being supplanted.

(i) If DCP payments were issued prior to enrollment in this Project, the participants acknowledge that for the particular year of participation in the Project according to this section, DCP payments will be based on temporarily reduced base acres.

(j) In the event an ACRE program contract was approved either before or after enrollment in this Project according to this section, the ACRE program contract participants acknowledge that for the particular year of participation in the Project according to this section, ACRE payments will be based on the temporarily reduced base acres.

§ 1412.49 Apportionment of long and medium grain rice.

(a) Rice base acres are established pursuant to section 1101 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7911) in effect on September 30, 2007, specified in § 1412.3.

(b) Owners will designate the rice base acres in paragraph (a) of this section into two categories:

(i) Long grain rice, and

(ii) Medium grain rice. Medium grain rice includes short grain rice.

(c) Owners on a farm will elect rice base acres according to paragraph (b) of this section, based on the 4-year average of the percentages of:

(i) Acreage planted on the farm to long grain rice and medium grain rice during the 2003 through 2006 crop years, plus

(ii) Any acreage on the farm that producers were prevented from planting to long grain and medium grain rice during the 2003 through 2006 crop years because of drought, flood, other natural disaster, or other condition beyond the control of the producers.

(d) If long grain or medium grain rice was not planted on the farm in one or more years during the 2003 through 2006 crop years, the percentages of acreage planted in the applicable State to long grain and medium grain rice will be substituted for the ''not planted'' years on the farm in paragraph (c) of this section.

(e) If an election is not made according to this section, the percentages of acreage planted in the applicable State to long grain and medium grain rice will be used in determining the base acres required in paragraph (b) of this section for the farm.

(f) The purpose of this section is to determine long grain rice base and medium grain rice base on the farm. This section will not increase or decrease the:

(i) Number of base acres on the farm;

(ii) Number of payment acres on the farm; or

(iii) Payment yield on the farm from that for rice under sections 1101 and 1102 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7911, 7912), as in effect on September 30, 2007, subject to any adjustment required in this part.

§ 1412.50 Matters of general applicability.

These regulations and CCC's interpretation of the regulations and internal agency directives issued to State and county FSA offices are matters of general applicability and are not individually appealable in administrative appeals according to §§ 11.3 and 780.5 of this title. Additionally, these rules and any decisions of CCC and FSA that are not based on facts derived from an individual participant's application, contract, or file, including but not limited to, decisions of whether or not to conduct a lottery, lottery selection process and results, signup deadlines, direct payment rates, counter-cyclical payment rates, or any other generally applicable payment rate or rates, national average market prices, determinations of production of crops produced in a State or States, actual State yields, benchmark State yields, program guarantee price or prices, or determinations of CCC regarding the percentage of acreage of a crop in State that is irrigated or non-irrigated, or any other similar determination that is made by CCC or FSA for use in all similarly situated applications, are not appealable under part 11 or part 780 of this title. The only extent by which the matters referenced in this section, and like similar generally applicable matters, are reviewable administratively in an appeal forum is whether FSA's or CCC's decision to apply the generally applicable matter is factually accurate and in conformance with the regulations in this part.

Subpart E—Financial Considerations Including Sharing Payments

§ 1412.51 Limitation of payments.

(a) The provisions of part 1400 of this chapter apply to this part. Payments under this part will not exceed the amounts specified in part 1400 of this chapter. As determined under that part, no person may receive more than $40,000 in direct payments or $65,000 in counter-cyclical payments with respect to any contract or crop year. For ACRE participants, no person may receive more than in ACRE and counter-cyclical payments and direct payments combined, more than the sum of:

(1) $65,000 and

(2) The amount of the reduction in direct payments required by the ACRE contract.

(b) The amount of 2008 direct and counter-cyclical payments for a farm will not exceed the maximum amount that would have been paid based on the number of persons as determined in accordance with part 1400 of this chapter on the farm as of May 22, 2008.

(c) Except as provided in this section, notwithstanding any other provision of this part, for the 2009 and subsequent crops, a producer on a farm will not receive direct payments, counter-cyclical payments, or ACRE payments if the sum of the base acres of covered commodities and peanuts on the farm is 10 acres or less. The 10-acre limitation of this subsection will not apply to a farm that is wholly-owned by a socially disadvantaged farmer or rancher (as defined in section 355(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2003 (e))) or a limited resource farmer or rancher, as defined by the Secretary. If such farm is owned by a legal entity, such as a corporation, each individual or entity with any interest in the entity must be a socially disadvantaged or limited resource farmer or rancher.

§ 1412.52 Direct payment provisions.

(a) For 2008 through 2012 contracts, a final direct payment will be made to eligible producers on a farm enrolled in a contract with respect to covered commodities and peanuts for which payment yields and base acres are established on or after October 1 of the fiscal year following the fiscal year of the contract in which the direct payment was earned.

(b) For 2008 through 2011 contracts, at the option of the producer, 22 percent of the direct payment for the farm with respect to covered commodities and peanuts for which payment yields and base acres are established will be paid in any month from December through September of the fiscal year of the contract, as requested by the producer, as an advance direct payment. Advance direct payments are not available for the 2012 crop year. For any participant on the contract to receive an advance direct payment, all producers sharing in the direct payments for the farm must:

(1) Be in compliance with all requirements of the contract and the requirements in this part at the time of the advance payment;

(2) Sign the DCP or ACRE program contract designating payment shares and provide supporting and necessary contractual documentation. If all producers on the farm have not signed the contract designating payment shares in accordance with this paragraph, the contract will not be considered approved and no contract participant will be eligible for any payment for that farm for that contract. FSA has no

obligation or responsibility to obtain signatures or requisite documents for DCP or ACRE program contract participants; and

(3) Comply with the provisions of parts 12 and 1400 of this title.

(c) If a producer declines to accept, or is determined to be ineligible for all or any part of the producer's share of the direct payment computed for the farm in accordance with the provisions of this section:

(1) The payment or portions thereof will not become available to or for any other producer and

(2) The producer must refund to CCC any amounts representing payments that exceed the payments determined by CCC to have been earned under the program authorized by this part. Part 1403 of this chapter is applicable to all unearned payments.

(d) The payment rates used to calculate direct payments with respect to covered commodities and peanuts on a farm enrolled in a contract are:

(1) Wheat—$0.52/bu.
(2) Corn—$0.28/bu.
(3) Grain sorghum—$0.35/bu.
(4) Barley—$0.24/bu.
(5) Oats—$0.024/bu.
(6) Upland cotton—$0.0667/lb.
(7) Long grain rice—$2.35/cwt.
(8) Medium grain rice—$2.35/cwt.
(9) Soybeans—$0.44/bu.
(10) Other oilseeds—$0.80/cwt.
(11) Peanuts—$36.00/ton.

(e) For 2008 through 2012 contracts, subject to the limitations of § 1412.51 and part 1400 of this chapter, the final direct payment amount to be paid to participants on a farm enrolled in a contract with respect to the covered commodities or peanuts for which payment yields and base acres are established is equal to the product of:

(1) The payment rate specified in paragraph (d) of this section, multiplied by

(2) The relevant payment acres of the covered commodity or peanuts on the farm enrolled in a contract, minus any acre reduction in accordance with § 1412.76(g), multiplied by

(3) The payment yield for the covered commodity or peanuts on the farm enrolled in a contract as determined in accordance with §§ 1412.31 and 1412.32, minus

(4) Any reduction calculated in accordance with subpart F of this part, minus

(5) Any advance payment received in accordance with paragraph (b) of this section.

(f)(1) The payment of any amount due any participant on a farm enrolled in a contract will be made only after all participants subject to the contract are determined to be in full compliance with the contract and the requirements of this part.

(2) A producer on a farm enrolled in a contract may receive a payment amount due without respect to the payment eligibility of other producers on the farm if all the following apply:

(i) The contract participant is in compliance with all contractual provisions;

(ii) The participant is in full compliance with the contract and the requirements in this part;

(iii) The payment of such amount does not affect adversely nor defeat the purpose of the program, as determined by the Deputy Administrator; and

(iv) The payment is approved by the Deputy Administrator.

§ 1412.53 Counter-cyclical payment provisions.

(a) For the 2008 through 2012 contracts, except as provided in subpart G of this part, a counter-cyclical payment will be made to eligible participants on a farm enrolled in a DCP contract with respect to covered commodities and peanuts for which payment yield and base acres are established:

(1) Only if the effective price for the covered commodity or peanuts, as determined in accordance with paragraph (b) of this section, is less than the target price of the covered commodity or peanuts, respectively, as determined in accordance with paragraph (c) of this section and

(2) As soon as practical, as determined by the Deputy Administrator, after the end of the 12-month marketing year for the covered commodity or peanuts, as applicable.

(b) For the purposes of paragraphs (a) and (g) of this section, the effective price for a covered commodity or peanuts, respectively, is equal to the sum of the following:

(1) The higher of:

(i) The national average market price received by producers during the 12-month marketing year for the covered commodity or peanuts, as applicable, as determined by the Secretary, or

(ii) For the 2008 crop year the following rates:

(A) Wheat—$2.75/bu.
(B) Corn—$1.95/bu.
(C) Grain sorghum—$1.95/bu.
(D) Barley—$1.85/bu.
(E) Oats—$1.33/bu.
(F) Upland cotton—$0.52/lb.
(G) Extra long staple cotton—$0.7977/lb.
(H) Long grain rice—$6.50/cwt.
(I) Medium grain rice—$6.50/cwt.
(J) Soybeans—$5.00/bu.
(K) Other oilseeds—$.30/cwt.
(L) Peanuts—$355.00/ton.

(2) The direct payment rate for the covered commodity as provided in § 1412.52(d).

(c) For the purposes of paragraphs (a) and (g) of this section, the target prices are as follows:

(1) For the 2008 and 2009 crop years (except as indicated):

(i) Wheat—$3.92/bu.
(ii) Corn—$2.63/bu.
(iii) Grain sorghum—$2.57/bu.
(iv) Barley—$2.24/bu.
(v) Oats—$1.44/bu.
(vi) Upland cotton—$0.7125/lb.
(vii) Long grain rice—$10.50/cwt.
(viii) Medium grain rice—$10.50/cwt.
(ix) Soybeans—$5.80/bu.
(x) Other oilseeds—$10.10/cwt.
(xi) Peanuts—$495.00/ton.
(xii) Dry peas—$8.32/cwt. (2009 crop only).
(xiii) Lentils—$12.81/cwt. (2009 crop only).
(xiv) Small chickpeas—$10.36/cwt. (2009 crop only).
(xv) Large chickpeas—$12.81/cwt. (2009 crop only).

(2) For each of the 2010 through 2012 crop years, the target prices are as follows:

(i) Wheat—$4.17/bu.
(ii) Corn— $2.63/bu.
(iii) Grain sorghum—$2.63/bu.
(iv) Barley—$2.63/bu.
(v) Oats—$1.79/bu.
(vi) Upland cotton—$0.7125/lb.
(vii) Long grain rice—$10.50/cwt.
(viii) Medium grain rice—$10.50/cwt.
(ix) Soybeans—$6.00/bu.
(x) Other oilseeds—$12.68/cwt.
(xi) Peanuts—$495.00/ton
(xii) Dry peas—$8.32/cwt.
(xiii) Lentils—$12.81/cwt.
(xiv) Small chickpeas—$10.36/cwt.
(xv) Large chickpeas—$12.81/cwt.

(d) The payment rate used to calculate counter-cyclical payments with respect to covered commodities and peanuts for which payment yields and base acres are established on a farm enrolled in a contract is equal to the result of:

(1) The target price of the covered commodity or peanuts as determined in accordance with paragraph (c) of this section, minus

(2) The effective price of the covered commodity or peanuts as determined in accordance with paragraph (b) of this section.

(e) For 2008 through 2012 DCP contracts, when counter-cyclical payments are required in accordance with paragraph (a) of this section, subject to the limitation in accordance with § 1412.51 and part 1400 of this chapter, the final counter-cyclical payment amount to be paid to producers

on a farm enrolled in a contract with respect to the covered commodities or peanuts for which payment yields and base acres are established is equal to the product of:

(1) The payment rate determined in accordance with paragraph (d) of this section, multiplied by

(2) The relevant payment acres of the covered commodity or peanuts, as applicable, minus any acre reduction in accordance with § 1412.47(g), multiplied by

(3) The payment yield for the covered commodity or peanuts on the farm enrolled in a contract as determined in accordance with § 1412.33, minus

(4) Any reduction calculated in accordance with subpart F of this part that was not satisfied by a reduction in the direct payments for the farm calculated in accordance with § 1412.52(e), minus

(5) Any partial payment received in accordance with paragraphs (f) or (g) of this section.

(f) For 2008 through 2012 DCP contracts, partial counter-cyclical payments will be paid, at the request of the producer, if the Secretary determines that a counter-cyclical payment for the covered commodity or peanuts, respectively, will be required in accordance with paragraph (a)(1) of this section. The first partial counter-cyclical payment will:

(1) Be calculated in accordance with paragraphs (e)(1) through (4) of this section;

(2) Be an amount determined by the Secretary not to exceed 40 percent of the projected counter-cyclical payment for the covered commodity or peanuts, respectively; and

(3) Be made after completion of the first 180 days of the marketing year for that crop;

(g) To the extent practicable, the final partial payment will be made beginning on October 1 of the fiscal year starting in the same calendar year as the end of the marketing year for that crop.

(1) If a producer declines to accept, or is determined to be ineligible for all or any part of the producer's share of the counter-cyclical payment computed for the farm in accordance with the provisions of this section:

(i) The payment or portions thereof will not become available for any other producer and

(ii) The producer will refund to CCC any amounts representing payments that exceed the payments determined by CCC to have been earned under the program authorized by this part. Part 1403 of this chapter is applicable to all unearned payments.

(2)(i) The payment of any amount due any producer on a farm enrolled in a contract will be made only after all the producers subject to the contract are determined to be in full compliance with the contract and the requirements in this part.

(ii) A participant on a farm enrolled in a contract may receive a payment amount due without regard to the eligibility of other participants on the enrolled and in compliance with contract farm if:

(A) The participant is in full compliance with the contract and the requirements in this part;

(B) The payment of such amount does not adversely affect or defeat the purpose of the program, as determined by the Deputy Administrator, or designee; and

(C) The payment is approved by the Deputy Administrator, or designee.

(h) The participants on a farm who receive any advance counter-cyclical payment must refund the portion of such advance payments that exceeds the actual counter-cyclical payment actually earned for the covered commodity or peanuts, as applicable.

§ 1412.54 Sharing of contract payments.

(a) Each eligible producer on a farm will be given the opportunity to annually enroll in a DCP or ACRE program contract, as applicable, and receive payments determined to be fair and equitable as agreed to by all the producers on the farm and approved by the county committee.

(b) Each producer leasing a farm must provide a copy of their written lease to the county committee and, in the absence of a written lease, must provide to the county committee a complete written description of the terms and conditions of any oral agreement or lease. An owner's or landlord's signature, as applicable, affirming a zero share on a contract may be accepted as evidence of a cash lease between the owner or landlord and tenant, as applicable, as determined by CCC. Such signature or signatures, if entered on the contract to satisfy the requirement of furnishing a written lease, must be entered on the contract no later than as prescribed in § 1412.41.

(c) When base acres are leased on a share basis, neither the landlord nor the tenant will receive 100 percent of the contract payment for the farm.

(d) CCC will approve a contract for enrollment and approve the division of payment when all of the following apply:

(1) The landlords, tenants, and sharecroppers sign the contract and agree to the payment shares shown on the contract;

(2) CCC determines that the interests of tenants and sharecroppers are being protected; and

(3) CCC determines that the payment shares shown on the contract do not circumvent either the provisions of this part or the provisions of part 1400 of this chapter.

(e) For the 2008 crop year only:

(1) A lease will be considered to be a cash lease if the lease provides for only a guaranteed cash payment for a specified amount or a fixed quantity of the crop (for example, cash, pounds, or bushels per acre).

(2) If a lease contains provisions that require the payment of rent on the basis of the amount of crop produced or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, or combination thereof, such agreement will be considered to be a share lease.

(3) If a lease provides for the greater of a determinable guaranteed amount or determinable share of the crop or crop proceeds, such agreement will be considered a share lease.

(4) If the lease is a cash lease, the landlord is not eligible for direct or counter-cyclical payments. The leasing of grazing or haying privileges is not considered cash leasing.

(f) For the 2009 through 2012 crop years:

(1) A lease will be considered to be a cash lease if the lease provides for only a guaranteed cash payment for a specified amount, or a fixed quantity of the crop (for example, cash, pounds, or bushels per acre).

(2) If a lease contains provisions that require the payment of rent on the basis of the amount of crop produced or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, or combination thereof, such agreement will be considered to be a share lease.

(3) If a lease provides for the greater of a determinable guaranteed amount or determinable share of the crop or crop proceeds, such agreement will be considered a cash lease.

(4) If the lease is a cash lease, the landlord is not eligible for direct, counter-cyclical, or ACRE program payments. The leasing of grazing or haying privileges is not considered cash leasing.

§ 1412.55 Provisions relating to tenants and sharecroppers.

(a) Neither direct nor counter-cyclical nor ACRE program payments will be made by CCC if:

(1) The landlord or operator has adopted a scheme or device for the

purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program. If any of such conditions occur or are discovered after payments have been made, all or any such part of the payments as the State committee may determine must be refunded to CCC; or

(2) The landlord terminated a lease in violation of state law as determined by a state court.

(b) [Reserved]

Subpart F—Contract Violations and Reduction in Payments

§ 1412.61 Contract violations.

(a) Except as provided in paragraph (b) of this section, violations of contract requirements will result in the termination of the contract. Upon such termination, all producers subject to the contract forfeit all rights to receive direct, counter-cyclical, and ACRE program payments on the farm for the contract and must refund all payments received, plus interest, to run from the date of the CCC disbursement, as determined in accordance with part 1403 of this chapter.

(b)(1) If there is a violation of § 1412.47 and CCC determines that a violation is not serious enough to warrant termination of the contract under paragraph (a) of this section, payments may be made to the producers specified on the contract, but in an amount that is reduced by an amount equal to the sum of:

(i) The per-acre market value of the fruits, vegetables, and wild rice, as determined by the State Committee, times the number of acres in violation, plus

(ii) The direct, counter-cyclical, and ACRE program payments for each such acre.

(2) Producers must protect land enrolled in DCP from weeds, including noxious weeds, and erosion, including providing sufficient cover if determined necessary by the county committee. The first violation of this provision will result in a reduction in the direct payments for the farm by an amount equal to three times the cost of maintenance of the acreage, but not to exceed 50 percent of the total direct payments for the farm. The second violation of this provision will result in a reduction in the direct payments for the farm by an amount equal to three times the cost of maintenance of the acreage, not to exceed the total direct payments for the farm. For the 2009 and subsequent crop years, a third violation of this provision will result in a complete reduction of all payments under the DCP or ACRE program contract.

§ 1412.62 Fruit, vegetable, and wild rice acreage reporting violations.

(a)(1) If an acreage report of fruits, vegetables, or wild rice planted on base acreage of a farm enrolled in DCP or the ACRE program is inaccurate but within tolerance as provided in paragraph (b) of this section and CCC determines the producer made a good faith effort to comply with the provisions of this section, the producers must accept a reduction in the direct, counter-cyclical, and ACRE program payments for each such acre.

(2) If an acreage report of fruits, vegetables, or wild rice planted on base acreage of a farm enrolled in DCP is inaccurate and exceeds the tolerance as provided in paragraph (b) of this section, but CCC determines the producer made a good faith effort to comply with the provisions of this section, the producers must accept a reduction in the direct, counter-cyclical, and ACRE program payments for the farm in an amount equal to the sum of:

(i) The direct, counter-cyclical, and ACRE program payments in such year for each such acre, plus

(ii) Twice the average dollar value of the direct payment for the covered commodity and peanut base acres reduced because of the fruit, vegetable, and wild rice plantings on such acre, multiplied by the total number of acres in violation.

(3) The contract will be terminated if an acreage report of fruits, vegetables, or wild rice planted on base acres of a farm enrolled in DCP or ACRE program is inaccurate, and the county committee determines the producer did not make a good faith effort to comply with the provisions of this section. Upon such termination, producers subject to such contract must:

(i) Forfeit all rights to receive direct, counter-cyclical, and ACRE program payments for the farm;

(ii) Refund all direct, counter-cyclical, and ACRE program payments received for the farm under the contract, plus interest as determined in accordance with part 1403 of this chapter; and

(iii) Be determined to be ineligible for all program benefits according to part 718 of this title.

(b) For the purposes of this section, tolerance is the amount by which the determined acreage may differ from the reported acreage and still be considered in compliance with program requirements. Tolerance for fruits, vegetables, and wild rice plantings is 5 percent of the reported fruit, vegetable, and wild rice acreage, not to exceed 50 acres.

§ 1412.63 Contract liability.

All signatories to a DCP or ACRE program contract are jointly and severally liable for contract violations and resulting repayments and penalties.

§ 1412.64 Inaccurate representation, misrepresentation, and scheme or device.

(a) Producers must report and certify program matters accurately. Errors in reporting may impact eligibility or extent of eligibility. Benefits under this part will be based on the most correct information available. Producers are responsible for refunding, with interest from the date of the CCC disbursement, any program benefits that were paid based on incorrect program information.

(b) For those cases in which FSA determines that an inaccurate representation or certification is a misrepresentation or scheme or device, such person will be ineligible to receive DCP or ACRE payments and will have the person's interest in all contracts terminated if it is determined that such person has done any of the following:

(1) Adopted any scheme or device that tends to defeat the purpose of this part;

(2) Made any fraudulent representation;

(3) Misrepresented any fact affecting a DCP, ACRE program, or determination made pursuant to part 1400 of this chapter; or

(4) Violated or been determined ineligible under § 1400.5 of this chapter.

(c) Any remedies taken by FSA or CCC in accordance with this section will be in addition to any other civil or other remedies that may be available, including, but not limited to, those provided in part 1400 of this chapter.

§ 1412.65 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person will be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter apply to contract payments.

(b) Any participant entitled to any payment may assign any payments in accordance with regulations governing the assignment of payments found at part 1404 of this chapter.

§ 1412.66 Acreage and production reports.

(a) As a condition of eligibility for payments under this part, the operator

or owner must accurately submit a report of all cropland acreage on the farm in accordance with part 718 of this title.

(b) Producers enrolled in the Project according to § 1412.48 and those seeking payments under subpart G of this part, must accurately submit a report of production, no later than the acreage reporting date for the crop in the year immediately following the crop year of the reported crop acreage, for each crop either enrolled in the Project according to § 1412.48 or for each covered commodity or peanuts on a farm enrolled in an ACRE program contract for which an acreage report greater than zero acres was filed according to paragraph (a) of this section. The report of production must be accompanied by documentation acceptable to CCC. The report must include the date harvest was completed. Records of production acceptable to CCC may include those specified in:

(1) Commercial receipts, settlement sheets, warehouse ledger sheets, or load summaries of the crop that was sold or otherwise disposed of through commercial channels provided the records are reliable or verifiable as determined by CCC; and

(2) Such documentary evidence such as contemporaneous measurements, truck scale tickets, and contemporaneous diaries, as is necessary in order to verify the information provided if the crop has been fed to livestock or otherwise disposed of other than through commercial channels, provided the records are reliable or verifiable as determined by CCC. If the crop will be disposed of through retail sales, such as roadside stands, u-pick, etc. and the producer will not be able to certify acceptable records of production, the producer must request an appraisal of the crop acreage prior to harvest.

§ 1412.67 Notices of loss.

(a) Provided that a notice of loss pursuant to part 1437 of this chapter has not already been filed, at least one producer having a share of a crop planted either pursuant to § 1412.48 or a producer with a share of crop of each covered commodity or peanuts on a farm enrolled in an ACRE program contract must provide a notice of loss to CCC in the administrative FSA office for the farm, within:

(1) For prevented planting claims, 15 calendar days after the final planting date,

(2) For low yield claims and allowable value loss, the earlier of:

(i) 15 calendar days after the damaging weather or adverse natural occurrence or date loss of the crop or commodity becomes apparent for low yield claims or

(ii) 15 calendar days after the normal harvest date.

(b) For each crop for which a notice of loss is filed, producers must provide the following information:

(1) Crop by type or variety, as applicable;

(2) The cause of the crop damage;

(3) Date the loss occurred, as applicable;

(4) Date the damage or loss became apparent;

(5) The existence of a guaranteed payment through a contract or agreement for planted acreage as opposed to delivery of production, if one exists;

(6) Type of crop loss occurred, for example, prevented planting or low yield;

(7) Practices employed to grow the crop, for example, irrigated or non-irrigated;

(8) For prevented planting:

(i) Total acreage intended to be planted to the crop in the administrative county;

(ii) Total acreage planted by the producer to the crop in the administrative county;

(iii) Whether a purchase, delivery, or arrangement for purchase or delivery was made for seed, chemicals, fertilizer, etc.; and

(iv) What and when land preparation measures, for example, cultivation, etc. were completed and indicate what has been done or will be done with the acreage, for example, abandoned, replanted, etc.

(9) For low yield:

(i) Total acreage planted by the producer to the crop in the administrative county;

(ii) Total acreage of the crop in the administrative county affected;

(iii) What and when land preparation measures and practices, for example, cultivation, planting, irrigated, etc. were completed before and after the loss; and

(iv) What will be done with the affected crop acreage, for example, harvested, destroyed and replanted to a different crop, abandoned, etc.

(10) Any such other information requested by CCC to establish the loss.

(c) A notice of loss provided beyond the time specified in paragraph (a) of this section may be considered timely filed if, at the discretion of CCC, provided at such time to permit an authorized CCC representative the opportunity to:

(1) Verify the information on the notice of loss by inspection of the specific acreage or crop involved; and

(2) Determine, based on information obtained by inspection of the specific acreage or crop involved, that an eligible cause of loss, as opposed to other circumstance, caused the claimed damage or loss.

(d) Crop acreage that will not be harvested, that is acreage that is to be abandoned or destroyed, must be left intact and producers must request, in the administrative FSA office for the acreage, a crop appraisal and release of crop acreage by a FCIC- or CCC-approved loss adjustor:

(1) Prior to destruction or abandonment of the crop acreage or

(2) No later than the normal harvest date, as determined by CCC.

§ 1412.68 Compliance with highly erodible land and wetland conservation provisions.

The provisions of part 12 of this title apply to this part.

§ 1412.69 Controlled substance violations.

The provisions of part 718 of this title apply to this part.

Subpart G—Average Crop Revenue Election (ACRE) Program

§ 1412.71 Administration.

(a) All of the provisions of this part apply to this subpart. To the extent that there is a conflict with the provisions of this part and subpart G of this part, the provisions of subpart G of this part apply.

(b) [Reserved]

§ 1412.72 Availability and election of alternative approach.

(a) As an alternative to receiving counter-cyclical payments under § 1412.53, and in exchange for a 20-percent reduction in direct payments under § 1412.52, as well as 30-percent reduction in established marketing assistance loan rates with respect to all covered commodities and peanuts on a farm, during each of the 2009, 2010, 2011, and 2012 crop years, as applicable, depending on the year the producer initially elects the ACRE option, producers, including owners, on a farm will have until June 1 of 2009 to make an irrevocable election to instead receive ACRE program payments, computed in accordance with the regulations of this part, for the 2009 crop year through and including the 2012 crop year. During each of the 2010, 2011, and 2012, crop years, as applicable, depending on the year the producer initially elects the ACRE option, producers, including owners, on a farm will have until June 1, or such earlier date as may be determined and announced at the discretion of the Deputy Administrator, of 2010, 2011,

and 2012, as applicable, to make an irrevocable election to instead receive ACRE program payments, computed in accordance with the regulations of this part, for the initial crop year for which the election is made through and including the 2012 crop year.

(b) If producers elect the ACRE option for a farm in accordance with paragraphs (a) and (d) of this section, any DCP contract enrolled prior to a timely election in a fiscal year will be considered withdrawn according to § 1412.41(b). The producers must still choose whether or not to enroll the ACRE elected farm in an ACRE program contract. DCP payments issued for the fiscal year of such election, including advance and partial program payments, must be refunded. No payments will be made available to participants under an ACRE program contract until such time as refunds have been remitted and enrollment has occurred as provided in this part, unless the Deputy Administrator determines to collect the refund instead by a setoff against the ACRE payment. Under no circumstances will election be construed to be an intent to enroll or an enrollment in the ACRE program.

(c) If a marketing assistance loan (including marketing assistance loans that have been repaid or immediately repaid) or loan deficiency payment has been computed prior to election of the ACRE option, the persons electing the ACRE option:

(1) Acknowledge that such marketing assistance loan (including any loan repayments) and loan deficiency payments will be recomputed based on reduced marketing assistance loan rates,

(2) Agree to immediately refund to CCC the difference in the amount of marketing assistance loan (including loan repayments) and loan deficiency payments as a result of the ACRE election.

(d) Eligible producers, including owners, on a farm electing ACRE participation by June 1 of:

(1) 2009, will be considered to have irrevocably elected the ACRE option for the 2009, 2010, 2011, and 2012 crop years and, if applicable, withdrew prior enrolled 2009 DCP contracts according to § 1412.41(b);

(2) 2010, or such earlier date determined and announced at the discretion of the Deputy Administrator, will be considered to have irrevocably elected the ACRE option for the 2010, 2011, and 2012 crop years and, if applicable, withdrew prior enrolled 2010 DCP contracts according to § 1412.41(b);

(3) 2011, or such earlier date determined and announced at the discretion of the Deputy Administrator, will be considered to have irrevocably elected the ACRE option for the 2011 and 2012 crop years and, if applicable, withdrew prior enrolled 2011 DCP contracts according to § 1412.41(b); or

(4) 2012, or such earlier date determined and announced at the discretion of the Deputy Administrator, will be considered to have irrevocably elected the ACRE option for the 2012 crop year and, if applicable, withdrew prior enrolled 2012 DCP contracts according to § 1412.41(b).

(e) If all of the producers on a farm fail to make an election under paragraphs (a) and (d), make different elections under paragraph (a), or fail to timely elect as required by paragraph (d), all of the producers on the farm will be deemed to have not made the ACRE election option and instead, provided DCP contract enrollment was previously made pursuant to this part, receive counter-cyclical payments under § 1412.53 for all covered commodities and peanuts on the farm, and to otherwise not have made the election described in paragraph (a), for the applicable crop years.

(f) Eligible producers on a farm who elect the ACRE option according to this section are making the irrevocable election for all of the farm as constituted on the date of election irrespective of whether the same producers are present on the farm in subsequent years and irrespective of whether there is a change of ownership. That is, the producer election is binding on the farm, not just the producers on the farm at the time of the election. An election is for the entire farm and not for part of a farm. If the total number of planted and considered planted acres to all covered commodities and peanuts of the producers on the farm exceeds the total base acreage of the farm that is enrolled pursuant to this part, the producers on the farm may choose which commodity or commodities the ACRE option will apply to under this section. Although the election according to paragraph (b) of this section is irrevocable, for a farm enrolled as specified in this part, each year following the election by the final acreage reporting date for the crop the producers on a farm already having the ACRE option elected may choose the commodity or commodities the ACRE option will apply to under this section.

(g) ''Timely elected'' under this section means all requisite signatures of eligible producers on a farm are entered on the election form and accompanied by supportive and necessary contractual documents according to § 1412.3.

(h) Unless an earlier date is determined and announced at the discretion of the Deputy Administrator, the election deadline for the ACRE option is June 1 as specified in § 1412.72(d) and there is no late file election period. The enrollment deadlines specified in this part and § 1412.41 apply to enrollments of farms under DCP contracts or ACRE program contracts. For election of ACRE in a fiscal year, all requisite signatures and supportive documentary evidence must be furnished by June 1, or such earlier date determined and announced at the discretion of the Deputy Administrator. ACRE elections will not be construed to be ACRE contract enrollments. Participants must enroll in an ACRE contract to participate in ACRE following election.

(i) Under no circumstances will the ACRE election option be permitted except as provided in this section. ACRE elections will not be approved unless all producers, including owners, on a farm at time of election have signed the form electing the option. The ACRE election will not be approved before all producers, including owners, on a farm have signed the ACRE election form. A producer's signature with other producers on a DCP contract enrolled prior to the submission of an election form will not be deemed evidence of the producer's agreement with those other producers with regard to election. An election of the ACRE option not having all requisite signatures of producers on a farm by the election deadline of the year in which election is made will not be considered submitted to CCC for the purpose of election in that fiscal year and will not be acted on or approved. In all cases, it is the responsibility of the operator and owners of a farm to submit all requisite signatures of producers necessary for election.

(j) Except as provided in paragraph (k) of this section, electing the ACRE option is irrevocable. Eligible producers may not withdraw an ACRE election option at any time. The provisions of § 1412.41(b) do not apply to ACRE elections.

(k) Any producer with an interest in a farm having made the ACRE election according to this section may unilaterally revoke the election for all of the farm if the election and revocation are both filed by the producer prior to the election deadline established for the initial year of election. The revocation must be submitted in writing to CCC no later than close of business on the date of the election deadline of the initial year of election. There are no late file provisions available for revocation of the ACRE election. No other revocations of the ACRE election will be permitted under this part in order to comply with

the irrevocability mandated in law. Accordingly, relief provisions in part 718, subpart D, of this title are not applicable to revocation of the ACRE election.

(l) In the event an ACRE election is revoked according to paragraph (k) of this section, the ACRE program contract, if enrolled, will be considered likewise withdrawn according to § 1412.41(b) and any and all payments issued under such contract must be refunded according to part 1403 of this chapter.

§ 1412.73 Sharing of ACRE payments.

(a) Each eligible producer on a farm will be given the opportunity to elect the ACRE option and receive payments determined to be fair and equitable as agreed to by all producers on the farm and approved by the county committee.

(b) The provisions of § 1412.54(f) regarding the classification of leases apply to ACRE.

§ 1412.74 Prior enrollment in DCP.

(a) If a farm was enrolled in a DCP contract according to subpart D of this part in a crop year prior to the time in which the producer elected the ACRE option according to § 1412.72:

(1) The ACRE election option in such crop year will be considered a request to have the DCP contract withdrawn for that crop year. To participate in an annual ACRE program contract following election, the farm must be enrolled under an ACRE program contract by the producers according to this part. The election will in no way be construed by CCC to be an enrollment.

(2) All direct and counter-cyclical payments issued to any participant on that farm must be refunded to CCC.

(b) [Reserved]

§ 1412.75 Notice of Election.

(a) CCC will provide notice to operators and owners of record regarding the opportunity to make each of the elections described in § 1412.72. The notice will include information:

(1) On the opportunity of the producers on a farm to make the election and

(2) Regarding the manner in which the election must be made and the time periods and manner in which notice of the election must be submitted to the CCC.

(b) CCC will provide the notice mentioned in paragraph (a) of this section to the operator and owners of record. The operator and owners are responsible for notifying all producers on the farm of the information contained in the notice.

§ 1412.76 Payments.

In the case of producers on a farm who make an election to receive ACRE payments for any of the 2009 through 2012 crop years for all covered commodities and peanuts and where enrollment according to this part has subsequently occurred, and where all other eligibility provisions have been satisfied, CCC will make ACRE payments available to the producers on a farm in accordance with this subpart. For each of the 2009 through 2012 crop years, as applicable when enrollment has occurred following election, CCC will make ACRE payments beginning October 1, or as soon as practicable thereafter, after the end of the applicable marketing year for the covered commodity or peanuts.

(a) CCC will make ACRE payments available to the producers on a farm for each crop year if the farm was enrolled according to this part following the election and:

(1) The actual State revenue for the crop year for the covered commodity or peanuts in the State determined under paragraph (c) of this section is less than

(2) The ACRE program guarantee for the crop year for the covered commodity or peanuts in the State determined under paragraph (d) of this section.

(b) Provided that the farm is enrolled following election and all other eligibility provisions are met, CCC will make ACRE payments available to the producers on a farm in a State for a crop year only if (as determined by CCC):

(1) The actual farm revenue for the crop year for the covered commodity or peanuts, as determined under paragraph (h) of this section is less than

(2) The farm ACRE benchmark revenue for the crop year for the covered commodity or peanuts, as determined under paragraph (i) of this section.

(c) The amount of the actual State revenue for a crop year of a covered commodity or peanuts will equal the product obtained by multiplying the average actual State yield for each planted acre for the crop year for the covered commodity or peanuts determined under paragraph (c)(1) of this section and the national average market price for the crop year for the covered commodity or peanuts determined under paragraph (c)(2) of this section.

(1) The average actual State yield for each planted acre for a crop year for a covered commodity or peanuts in a State will equal, as determined by CCC,

(i) The quantity of the covered commodity or peanuts that is produced in the State during the crop year, divided by

(ii) The number of acres that are planted to the covered commodity or peanuts in the State during the crop year and

(2) The national average market price for a crop year for a covered commodity or peanuts in a State will equal the greater of

(i) The national average market price received by producers during the 12-month marketing year for the covered commodity or peanuts, as determined by the Secretary, or

(ii) The established marketing assistance loan rate for the covered commodity or peanuts as reduced according to § 1412.72.

(d) The ACRE program guarantee for a crop year for a covered commodity or peanuts in a State will equal 90 percent of the product obtained by multiplying

(1) The average benchmark State yield for each planted acre for the crop year for the covered commodity or peanuts in a State determined under paragraph (e) of this section and

(2) The ACRE program guarantee price for the crop year for the covered commodity or peanuts determined under paragraph (f) of this section.

(i) In the case of each of the 2010 through 2012 crop years, the ACRE program guarantee for a crop year for a covered commodity or peanuts in paragraph (d) of this section will not decrease or increase more than 10 percent from the guarantee for the preceding crop year. The increase or decrease in the state revenue guarantee for a covered commodity or peanuts will be applicable to all ACRE program participants in a State, regardless of the year the participant first elected ACRE or enrolled.

(ii) [Reserved]

(e) The average benchmark State yield for each planted acre for a crop year for a covered commodity or peanuts in a State is equal to the average yield per planted acre for the covered commodity or peanuts in the State for the most recent 5 crop year yields, excluding each of the crop years with the highest and lowest yields, using National Agricultural Statistics Service data to the extent possible.

(1) If CCC cannot establish the average benchmark State yield for each planted acre for a crop year for a covered commodity or peanuts in a State in accordance with this paragraph or if the yield determined is an unrepresentative average yield for the State (as determined by the CCC), CCC will assign a benchmark State yield for each planted acre for the crop year for the covered commodity or peanuts in the State on the basis of:

(i) Previous average yields for a period of 5 crop years, excluding each of the crop years with the highest and lowest yields or

(ii) Average benchmark State yields for planted acres for the crop year for the covered commodity or peanuts in similar States.

(2) [Reserved]

(f) The ACRE program guarantee price for a crop year for a covered commodity or peanuts in a State is the simple average of the national average market price received by producers of the covered commodity or peanuts for the most recent 2 crop years, as determined by CCC.

(g) In the case of a State in which at least 25 percent of the acreage planted to a covered commodity or peanuts in the State is irrigated and at least 25 percent of the acreage planted to the covered commodity or peanuts in the State is not irrigated, CCC will calculate a separate ACRE program guarantee for the irrigated and non-irrigated areas of the State for the covered commodity or peanuts.

(h) The amount of the actual farm revenue for a crop year for a covered commodity or peanuts will equal the amount determined by multiplying:

(1) The actual yield for the covered commodity or peanuts of the producers on the farm and

(2) The national average market price for the crop year for the covered commodity or peanuts.

(i) The farm ACRE benchmark revenue for the crop year for a covered commodity or peanuts will equal the sum obtained by adding:

(1) The amount determined by multiplying

(i) The average yield per planted acre for the covered commodity or peanuts of the producers on the farm for the most recent 5 crop years, excluding each of the crop years with the highest and lowest yields and

(ii) The ACRE program guarantee price for the applicable crop year for the covered commodity or peanuts in a State and

(2) The amount of the per acre crop insurance premium required to be paid by the producers on the farm for the applicable crop year for the covered commodity or peanuts on the farm.

(j) If ACRE payments are required to be paid for any of the 2009 through 2012 crop years of a covered commodity or peanuts under this section, the amount of the ACRE payment to be paid to the producers on the farm for the crop year under this section will be equal to the product obtained by multiplying:

(1) The lesser of—

(i) The difference between—

(A) The ACRE program guarantee for the crop year for the covered commodity or peanuts in the State and

(B) The actual State revenue from the crop year for the covered commodity or peanuts in the State and

(ii) 25 percent of the ACRE program guarantee for the crop year for the covered commodity or peanuts in the State;

(2)(i) For each of the 2009 through 2011 crop years, 83.3 percent of the acreage planted or considered planted to the covered commodity or peanuts for harvest on the farm in the crop year and

(ii) For the 2012 crop year, 85 percent of the acreage planted or considered planted to the covered commodity or peanuts for harvest on the farm in the crop year; and

(3) The quotient obtained by dividing—

(i) The average yield per planted acre for the covered commodity or peanuts of the producers on the farm for the most recent 5 crop years, excluding each of the crop years with the highest and lowest yields, by

(ii) The benchmark State yield for the crop year.

§ 1412.77 Transfer of land and succession-in-interest.

(a) Land subject to an ACRE election will continue to be subject to the election even if there is a transfer of land or change in interest of any producer on the farm. If a new owner or operator or producer purchases or obtains the right and interest in, or right to occupancy of, the land subject to an ACRE election option, such new owner or operator or producer, upon the approval of CCC, may choose to become a participant to a new ACRE contract with CCC with respect to such transferred land in accordance with § 1412.41.

(b) A succession in interest to an ACRE program contract may be permitted if there has been a change in the operation of a farm such as:

(1) A sale of land;

(2) A change of operator or producer, including a change in a partnership that increases or decreases the number or changes who are partners;

(3) A foreclosure, bankruptcy, or involuntary loss of the farm;

(4) A change in the producer shares to reflect changes in the producer's share of the crop(s) that were originally approved on the contract; or

(5) Another change as otherwise determined by the Deputy Administrator by which the succession will not adversely affect nor defeat the purpose of the program.

(c) A succession in interest to an ACRE program contract is not permitted if CCC determines that the change:

(1) Is not for all the time remaining under the ACRE program contract;

(2) Results in a violation of the landlord-tenant provisions specified in § 1412.55; or

(3) Adversely affects or otherwise defeats the purpose of the program.

(d) The provisions of § 1412.46(c) and (d) apply to ACRE participation.

(e) In any case in which a payment or payments have previously been made to a predecessor, such payment will not be paid to the successor, unless such payment has been refunded in full by the predecessor, in accordance with § 1412.41(d).

§ 1412.78 Violations.

(a)(1) If a participant fails to carry out the terms and conditions of an ACRE contract, CCC may terminate the ACRE contract.

(2) If the ACRE contract is terminated by CCC in accordance with this paragraph:

(i) The participant will forfeit all rights to further payments under such contract and refund all payments previously received together with interest;

(ii) Pay liquidated damages to CCC in such amount as specified in such contract.

(iii) The acreage is ineligible for further DCP and ACRE participation from the time of termination through 2012 regardless of the reason or reasons for such termination; and

(b) If the Deputy Administrator determines such failure does not warrant termination of such contract, the Deputy Administrator may authorize relief as the Deputy Administrator deems appropriate. Participants are not entitled to either relief or even the consideration of relief under this paragraph. Relief under this paragraph is solely discretionary by the Deputy Administrator.

(c) CCC may reduce a demand for a refund under this section to the extent CCC determines that such relief would be appropriate and will not deter the accomplishment of the goals of the program.

§ 1412.79 Executed ACRE contract not in conformity with regulations.

If, after an ACRE contract is approved by CCC, it is discovered that such ACRE contract is not in conformity with the provisions of this part, the provisions of this part will prevail.

§ 1412.80 Division of program payments and provisions relating to tenants and sharecroppers.

(a) Payments received under this subpart will be divided in the manner specified in the applicable contract or agreement and CCC will ensure that producers, who would have an interest in acreage being offered, receive treatment that CCC deems to be equitable, as determined by the Deputy Administrator. CCC may refuse to enter into a contract when there is a disagreement among persons seeking enrollment as to a person's eligibility to participate in the contract as a tenant and there is insufficient evidence to indicate whether the person seeking participation as a tenant does or does not have an interest in the acreage offered for enrollment in ACRE.

(b) CCC may remove an operator or tenant from an ACRE contract when the operator or tenant:

(1) Requests, in writing to be removed from the ACRE contract;

(2) Files for bankruptcy and the trustee or debtor in possession fails to affirm the contract, to the extent permitted by the provisions of applicable bankruptcy laws;

(3) Dies during the contract period and the Administrator of the estate fails to succeed to the contract within a period of time determined by the Deputy Administrator; or

(4) Is the subject of an order of a court of competent jurisdiction requiring the removal from the ACRE contract of the operator or tenant and such order is received by FSA, as determined by the Deputy Administrator.

(c) In addition to the provisions in paragraph (b) of this section, tenants must maintain their tenancy throughout the contract period in order to remain on a contract. Tenants who fail to maintain tenancy on the acreage under contract, including failure to comply with provisions under applicable State law, may be removed from a contract by CCC. CCC will assume the tenancy is being maintained unless notified otherwise by a ACRE participant specified in the applicable contract.

Signed in Washington, DC, December 19, 2008.

Glen L. Keppy,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. E8–30763 Filed 12–23–08; 11:15 am]

BILLING CODE 3410–05–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has adopted final amendments to its Regulation A to reflect the Board's approval of a decrease in the primary credit rate at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically decreased by formula as a result of the Board's primary credit rate action.

DATES: The amendments to part 201 (Regulation A) are effective December 29, 2008. The rate changes for primary and secondary credit were effective on the dates specified in 12 CFR 201.51, as amended.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board (202/452–3259); for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to the review and determination of the Board.

The Board approved requests by the Reserve Banks to decrease by 75 basis points the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby decreasing from 1.25 percent to 0.50 percent the rate that each Reserve Bank charges for extensions of primary credit. As a result of the Board's action on the primary credit rate, the rate that each Reserve Bank charges for extensions of secondary credit automatically decreased from 1.75 percent to 1.00 percent under the secondary credit rate formula. The final amendments to Regulation A reflect these rate changes.

The 75-basis-point decrease in the primary credit rate was associated with a decrease in the target for the federal funds rate (from 1.00 percent to a target range of 0 to ¼ percent) approved by the Federal Open Market Committee (Committee) and announced at the same time. A press release announcing these actions indicated that:

> Since the Committee's last meeting, labor market conditions have deteriorated, and the available data indicate that consumer spending, business investment, and industrial production have declined. Financial markets remain quite strained and credit conditions tight. Overall, the outlook for economic activity has weakened further.
>
> Meanwhile, inflationary pressures have diminished appreciably. In light of the declines in the prices of energy and other commodities and the weaker prospects for economic activity, the Committee expects inflation to moderate further in coming quarters.
>
> The Federal Reserve will employ all available tools to promote the resumption of sustainable economic growth and to preserve price stability. In particular, the Committee anticipates that weak economic conditions are likely to warrant exceptionally low levels of the federal funds rate for some time.

Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the new primary and secondary credit rates will not have a significantly adverse economic impact on a substantial number of small entities because the final rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The Board did not follow the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of these amendments because the Board for good cause determined that delaying implementation of the new primary and secondary credit rates in order to allow notice and public comment would be unnecessary and contrary to the public interest in fostering price stability and sustainable economic growth. For these same reasons, the Board also has not provided 30 days prior notice of the effective date of the rule under section 553(d).

12 CFR Chapter II

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR Chapter II to read as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.[1]

(a) *Primary credit.* The interest rates for primary credit provided to depository institutions under § 201.4(a) are:

Federal Reserve Bank	Rate	Effective
Boston	0.50	December 17, 2008.
New York	0.50	December 16, 2008.
Philadelphia	0.50	December 18, 2008.
Cleveland	0.50	December 16, 2008.
Richmond	0.50	December 16, 2008.
Atlanta	0.50	December 16, 2008.
Chicago	0.50	December 16, 2008.
St. Louis	0.50	December 17, 2008.
Minneapolis	0.50	December 16, 2008.
Kansas City	0.50	December 16, 2008.
Dallas	0.50	December 17, 2008.
San Francisco	0.50	December 16, 2008.

(b) *Secondary credit.* The interest rates for secondary credit provided to depository institutions under 201.4(b) are:

Federal Reserve Bank	Rate	Effective
Boston	1.00	December 17, 2008.
New York	1.00	December 16, 2008.
Philadelphia	1.00	December 18, 2008.
Cleveland	1.00	December 16, 2008.
Richmond	1.00	December 16, 2008.
Atlanta	1.00	December 16, 2008.
Chicago	1.00	December 16, 2008.
St. Louis	1.00	December 17, 2008.
Minneapolis	1.00	December 16, 2008.
Kansas City	1.00	December 16, 2008.
Dallas	1.00	December 17, 2008.
San Francisco	1.00	December 16, 2008.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 22, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–30819 Filed 12–24–08; 8:45 am]

BILLING CODE 6210–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 712 and 741

RIN 3133—AD20

Credit Union Service Organizations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is issuing a final rule amending its credit union service organization (CUSO) regulation. The amendment adds two new categories of permissible CUSO activities: Credit card loan origination and payroll processing services. The amendment also adds new examples of permissible CUSO activities within existing categories and expands the permissible scope of certain services to include persons eligible for credit union membership. The amendment imposes new regulatory limits on the ability of credit unions to recapitalize their CUSOs in certain circumstances. Although the CUSO rule generally only applies to federal credit unions (FCUs), the amendment revises and extends to all federally insured credit unions the provisions ensuring that credit union regulators have access to books and records and that CUSOs are operated as separate legal entities; however, the rule also contains a procedure through which state regulators may seek an exemption from the access to records provisions for credit unions in their state. The amendment clarifies that CUSOs may buy and sell participations in loans they are authorized to originate. Finally, the amendment deletes as unnecessary the section in the current rule concerning amendment requests. These amendments clarify the rule, enhance CUSO operations, and address safety and soundness concerns.

DATES: This rule will become effective on January 28, 2009.

FOR FURTHER INFORMATION CONTACT: Ross P. Kendall, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

FCUs have the authority to lend up to 1% of their paid-in and unimpaired capital and surplus and to invest an equivalent amount in credit union organizations. 12 U.S.C.1757(5)(D), (7)(I). NCUA regulates this FCU lending and investing authority in the CUSO rule. 12 CFR Part 712. The CUSO rule permits an FCU to invest in or lend to a CUSO only if the CUSO primarily

[1] The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

serves credit unions, its membership, or the membership of credit unions contracting with the CUSO. 12 CFR 712.3(b).

NCUA's policy is to review its regulations periodically to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' Interpretive Ruling and Policy Statement (IRPS) 87–2, Developing and Reviewing Government Regulations. NCUA notifies the public about the review, which is conducted on a rolling basis, so that a third of its regulations are reviewed each year. This amendment is, in part, a result of NCUA's 2007 review under IRPS 87–2, which covered the middle third of the regulations, including part 712. The amendment is intended to update and clarify the regulation.

B. Proposed Rule

On April 17, 2008, the NCUA Board issued a proposed rule to amend Part 712. 73 FR 23982 (May 1, 2008). The proposal described each of the changes covered in this final rule, including a discussion of the reason for each change, and an invitation for public comment. NCUA also solicited comment on whether to change the rule to allow for a majority owner of a CUSO to conduct a consolidated opinion audit, although the Board was not proposing that change. The public comment period closed on June 30, 2008. NCUA received comments regarding the proposed changes from five credit unions, six national trade associations, eight state credit union trade associations, one law firm and four CUSOs, for a total of twenty-four comments. Of these, three commenters also addressed the consolidated opinion audit question.

Summary of Comments

A. General. Many commenters supported most aspects of the proposal, generally agreeing in principle with the approach of expanding CUSO authority and providing clarification through the addition of examples under approved categories, including the ability to buy and sell participations in loans they are authorized to make. Several commenters urged NCUA to expand authority by authorizing CUSOs to engage in any activity permissible for FCUs. Eight commenters specifically requested NCUA authorize CUSOs to make car loans, including direct lending and the purchase of retail installment sales contracts from vehicle dealerships, noting advantages that would flow to credit unions from the ability to consolidate and leverage in this business. Another commenter suggested NCUA authorize CUSOs to engage in payday lending as well.

The Board has elected not to expand CUSO lending authority beyond that which was proposed. A primary rationale for allowing CUSOs to engage in loan origination is, in some cases, such as business, student and real estate lending, a level of expertise that may not be attainable by individual credit unions is necessary for a successful loan program. While the Board is convinced successful administration of a credit card program requires this type of specialization and expertise, the same is not true in the case of vehicle lending, which most credit unions are able to manage successfully at the individual credit union level. In response to the comments suggesting CUSOs should be permitted to engage in any activity permissible for FCUs, the Board notes the statutory authority for FCU activities is separate from the authority granted to FCUs to lend to and invest in CUSOs, which provides CUSOs are ''primarily to serve the needs of member credit unions'' and provide ''services which are associated with the routine operations of credit unions.'' 12 U.S.C. 1757(5)(D), 1757(7)(I).

Some commenters questioned the wisdom and the authority of allowing CUSOs to expand into new areas. These commenters pointed out that NCUA lacks direct supervisory authority over CUSOs and other third party service providers and so suggested that expansions would lead to safety and soundness concerns. Two of these commenters also criticized what they characterized as continued erosion of the distinction between services that CUSOs may provide for credit unions and services that may be provided to credit union members and others. One commenter suggested the credit union charter is in danger of simply becoming a shell, permitting the ownership of businesses that are allowed to engage in virtually any pursuit available to the credit union.

B. Specific Comments and NCUA response. Upon consideration of the public comments, the NCUA Board has made some changes in the final rule. The specific comments and NCUA's responses are discussed in the following section-by-section analysis.

Expansion of certain services to persons within the field of membership. Several commenters supported the proposal to expand the range of individuals for whom CUSOs may provide certain types of services. Supporters noted their agreement with the logic in the proposal that the enactment of the Financial Services Regulatory Relief Act of 2006 (FSRRA; Pub. L. 109–351, sections 502–503; 120 Stat. 1966 (2006)), authorizing credit unions to provide certain services to individuals within their field of membership even though the individuals were not members, supports a parallel argument broadening the scope for CUSOs offering comparable services if primarily limited to the same population. A few suggested the categories of service be more closely correlated to the specific services authorized by FSRRA; one suggested the proposal be broadened, in view of the open-ended nature of the statutory term ''money transfer instrument'' as used in FSRRA.

Some commenters opposed the expansion, asserting that FSRRA makes no mention of CUSOs and, thus, the proposed expansion is unauthorized. One commenter, representing the banking industry, also challenged the basic premise underlying all CUSO services provided to natural persons, whether a credit union member or not. The commenter argued that the original intent of Congress in amending the FCU Act to allow FCUs to invest in or lend to CUSOs was that CUSOs would only provide services to credit unions, not to their members. The commenter also specifically criticized NCUA's reluctance to define what the term ''primarily serves'' means and noted that, in this context in particular, the potential for a significant expansion of CUSO services is present.

The Board has considered these arguments but has determined to proceed with the concept of creating an expanded scope of individuals who are eligible to receive certain CUSO services. With respect to the ''original intent'' argument, the Board notes that the FCU Act contains no restriction on FCUs making loans to or investing in a CUSO that provides services to natural persons as opposed to credit unions. An FCU may make a loan to a CUSO ''established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of credit unions.'' 12 U.S.C. 1757(5)(D). An FCU may invest in a CUSO ''providing services which are associated with the routine operation of credit unions.'' 12 U.S.C. 1757(7)(I). The legislative history cited by the commenter in support of its view relates only to the authority of FCUs to make loans to CUSOs. It has no bearing on the investment authority. Moreover, the referenced legislative history contains a listing of the types of services the committee members envisioned a CUSO would provide, and while most of the services listed are services typically provided to credit unions, the listing

also includes ''non-profit debt counseling services.'' H.R. Rep. No. 95–23, at 11 (1977), *reprinted in* 1977 U.S.C.C.A.N. 105, 115. Thus, the original listing of services includes a service that would only be provided to individuals. This service has been an approved CUSO category since the original CUSO rule was promulgated in 1979. Since that time, the rule has evolved and now includes numerous services that are intended to be provided to individuals.

With respect to the expansion of the scope argument, the Board notes the intention of FSRRA is to encourage FCUs to reach out to individuals in the community who have no formal relationship with a depository institution but who are in need of certain basic financial services, such as check cashing and wire transfer services. With the enactment of FSRRA, FCUs can offer these services to individuals regardless of their membership status, so long as they are within the FCU's field of membership. A CUSO's authority has always been derivative; since FSRRA has expanded the scope of services that FCUs may provide, the Board believes a parallel expansion for CUSOs is appropriate and supportable.

The Board has, however, re-evaluated the approach taken in the proposed rule and has determined to clarify and narrow the scope of this provision. The proposed rule simply noted that services covered in FSRRA ''correspond'' to the checking and currency services and the electronic transaction services categories in the CUSO rule. 73 FR 23982–83. The Board now believes that some, but not all, of the services described in these two categories correlate with the scope of FSRRA. The Board has determined some of the examples listed under these two categories in the CUSO rules, such as data processing, electronic income tax filing, and ATM services are not within the scope of services contemplated by the authority FSRRA granted to FCUs and that is the basis for the expansion for CUSOs. Moreover, the categories in the CUSO rule are not designed as defining limits, but rather are set out, with illustrative examples, to outline the types of services permissible for CUSOs. Therefore, the final rule clarifies the services CUSOs may provide to individuals who are not credit union members but simply within the field of membership by expressly referencing the regulation applicable to FCUs. Accordingly, the final CUSO rule cross-references § 701.30, which implements the FSRRA authority for FCUs, and indicates FCUs with a loan or an investment with a CUSO engaged in providing any of these particular services will be considered compliant with our rule to the extent the CUSO provides them primarily to persons within the FCU's field of membership.

Credit card loan origination. The majority of commenters supported this amendment, noting agreement with the advantages described in the preamble to the proposed rule, such as improved efficiencies and creation of an industry-based alternative for credit unions seeking to sell their portfolios. Other commenters, however, questioned the wisdom of this expansion, suggesting that NCUA lacked sufficient oversight authority for CUSOs and that the proposal would result in increased safety and soundness risks. The NCUA Board disagrees with the commenters who oppose this expanded authority for FCUs and, for the reasons stated in the preamble to the proposed rule, adopts the proposed amendment without change.

The Board notes, in this respect, concerns some commenters identified about an FCU's ability to acquire a participation interest in a portfolio consisting of credit card loans. In the preamble to the proposed rule, the Board observed that, given the revolving, open-end nature of credit cards, NCUA's loan participation rule would not support a sale to an FCU of a participation interest in a credit card portfolio. NCUA's loan participation rule contemplates an acquisition of a specific portion of a discrete loan or schedule of loans. 12 CFR 701.22. By its nature, a credit card portfolio consists of many individual, dynamic, credit relationships: typically, new card holders enter the pool underlying the portfolio, and credit limits for existing card holders in the pool may change. Under the loan participation rule, either event would require modifications to the original schedule of loans as well as approval from the credit union's board or investment committee. 12 CFR 701.22(d)(3), (4). Of equivalent concern, credit cards by their nature have no discrete maturity date. It is unclear how a participant, once having made its purchase, would know when its interest has matured and may be recouped. Without tracking specific payments received on specific accounts in the portfolio, a participant's interest appears to be more closely aligned with the overall performance of the portfolio than with any discrete segment of it. In this respect, it resembles an investment rather than a participation.

Extending examination and corporate separateness requirements to federally insured, state chartered credit unions (FISCUs). Several commenters opposed this aspect of the proposal. Some characterized it as unnecessary, while others objected to the increased compliance burden on credit unions. A few questioned whether NCUA has the authority to impose this requirement; one added that NCUA lacked expertise to conduct this type of review. The commenter representing state credit union regulators suggested NCUA should continue to rely primarily on cooperation with state regulators and should specifically exempt credit unions from compliance in states in which the regulatory structure is adequate. The commenter opposed an across the board application of the rule, noting that it could simply add another layer of regulation without an improvement in regulatory oversight. This commenter recognized the validity of NCUA's insistence on corporate separateness for all federally insured credit unions but asked that NCUA specifically set out the regulatory requirement in part 741, rather than incorporate the provisions by reference.[1] This commenter also advocated creation of thresholds for application of the rule, with certain types of business exempt from compliance and suggested the proposal not apply where a credit union simply has a loan to the CUSO or a de minimis investment.

In view of these comments, the Board has determined to adopt and incorporate into the rule a procedure whereby a state credit union regulator can request an exemption for FISCUs in that state from compliance with § 712.3(d)(3), based on a showing to the appropriate NCUA regional director of three things: first, current state law provides the regulator with full rights of access to relevant books and records of the CUSO; second, the regulator is willing and able to provide NCUA with equal access; and, third, access must be available to NCUA on its own timetable. The final version of § 712.10 incorporates these concepts. The procedure outlined here is similar to that which applies in the member business loan context and enables a state regulator to initiate a request for an exemption which, if approved by the NCUA Board, would exempt FISCUs chartered in that state from compliance

[1] Part 741, which sets out requirements for federal share insurance, is divided into two subparts: the first subpart has requirements on insurance applicable to both FCUs and state chartered credit unions not addressed elsewhere in the regulations. The second subpart part identifies and incorporates by reference provisions in other parts of the regulations, which apply to FCUs, that also apply, in whole or in part, to FISCUs.

with this requirement of the CUSO rule. *See* 12 CFR 723.20.

The Board has not adopted the other recommended restrictions the commenters advocated. The Board is not persuaded as to the merit of these other elements. Risk to the credit union derives from the transactions in which the CUSO is engaged, not the extent or character of the credit union's interest in it. While some lines of business for CUSOs are less risky than others, any CUSO engaged in a business affecting member money, member transactions, or member personal information presents a potential risk. Where a CUSO is engaged in a low volume, low risk venture, NCUA is unlikely to have a reason to insist on access to its books and records. Since it is the access, rather than the requirement of having an agreement with the CUSO, that presents the burden to institutions, the Board believes an exception based on line of business is likewise not warranted.

Reciprocity. The Board has retained the proposed change in § 712.3(d)(3), as discussed in the preamble to the proposed rule, to require an FCU's agreement with its CUSO to permit access not only to NCUA but also to any state regulator having supervisory responsibility over any FISCU that has a loan, an investment, or a contractual agreement for products or services with the CUSO. This requirement assures a regulator with responsibility for a credit union can review and evaluate the risk to which its institutions may be exposed. Even though NCUA enjoys a cooperative relationship with state credit union regulators and typically shares relevant information with them, the Board recognizes there may be circumstances in which access to books and records is useful or necessary for the state regulator. At the same time, the Board does not anticipate that extending the rule in this way will result in an inordinate number of requests for access by state regulators to CUSO books and records.

Transition Period for Compliance. The Board has also retained in the final rule the provisions in the proposal providing FISCUs with time to develop and enter agreements with their CUSOs and to obtain legal opinions addressing corporate separateness issues. Similarly, the final rule provides a transition period for FCUs with loans to or investments in CUSOs to make changes in the agreements they currently have with their CUSOs. As discussed in the proposal, the compliance date the rule establishes for each of these changes is not earlier than six months following the date of publication of the final rule in the **Federal Register**.

Prior approval for certain CUSO recapitalizations. Several commenters opposed this aspect of the proposal. Some suggested notice to NCUA, rather than prior approval, should be sufficient; one national trade association suggested changing the threshold below which approval is necessary to credit unions with a net worth of less than four percent. Notwithstanding these comments, for the safety and soundness reasons discussed in the preamble to the proposed rule, the Board has determined to retain this provision and adopts the amendment as proposed.

Elimination of specific amendment procedures in part 712. Half the commenters opposed eliminating the specific amendment procedures in § 712.7. Most indicated they prefer the unique procedure in the rule, even though a generic amendment procedure is available in part 791. Commenters noted they did not want to have to rely on the three-year rolling regulatory review underlying the generic amendment process and, also, that changes in the financial sector can occur rapidly and, therefore, the sixty-day time limits in the CUSO rule are preferable. One commenter suggested NCUA keep the unique amendment provisions but extend the applicable time limits if necessary.

Notwithstanding these comments, the Board has determined to eliminate the amendment provisions from part 712, as discussed in the preamble to the proposed rule. The Board notes, in this respect, that the generic amendment provisions in part 791 are not tied to the three-year cycle NCUA follows in reviewing its regulations. Members of the public may request an amendment to any rule, at any time, under the procedures in part 791. If circumstances warrant, NCUA is able to move quickly and can, if necessary, issue an interim final rule effective within a short time frame. 5 U.S.C. 553(b)(B). Accordingly, the separate amendment provisions in § 712.7 are redundant and unnecessary.

Payroll services. A substantial number of commenters supported this expansion. Banking industry commenters noted opposition, however, suggesting the change would serve to further erode what they see as the credit union's principal mission of serving individual consumers, especially those of modest means. The Board notes FCUs have provided services and support to their members who are entrepreneurs and small business owners for many years and enabling CUSOs to provide this service to those members is a logical, efficient expansion of CUSO authority. Accordingly, the Board is adopting this amendment as proposed.

Additional Examples of Permissible Activities Within Approved Categories. The proposed rule outlined several new examples of permissible CUSO activities related to the routine daily operation of credit unions, including real estate settlement services, employee leasing and support, purchase of non-performing loans, business counseling and related services for credit union business members, and referral and processing of loan applications for members turned down by the credit union. The Board has determined to include each of these examples in the final rule.

The Board has received requests during the comment period for this rulemaking and previously to consider permitting CUSOs to provide stored value products, such as gift cards, pre-paid credit cards, postage stamps, transportation tokens, and so forth, to credit union members. Although not included specifically in the proposed rule, the Board concludes that stored value products should be added as an illustration under § 712.5(a), Checking and currency services. Section 712.5(a) is amended to add a new example titled ''stored value products.'' The Board intends stored value products in part 712 to have the same meaning as provided in the incidental powers rule for FCUs. 12 CFR 721.3(k). Currently, CUSOs provide check cashing, currency services, and sale of money orders under § 712.5(a)(1), (2), and (3). The Board believes permitting persons to convert their funds into stored value products may, in many instances, provide a safer and more convenient transaction. Like many of the CUSO services, the Board also believes selling stored value products, such as gift cards, pre-paid credit cards, postage stamps, transportation tokens, and similar media, is not an economical endeavor for individual credit unions yet is one that credit unions would like to make available. Therefore, this additional example is added in the final rule.

Loan Participations. For the reasons outlined in the proposed rule, the Board has also determined to include in the final rule the clarifying amendment specifying that CUSOs are authorized to buy and sell participations in loans they are authorized to make.

Other aspects. Two commenters expressed support for allowing a credit union with a majority ownership interest in a CUSO to obtain a consolidated opinion audit. Another commenter, noting the expense of procuring an opinion audit can be significant, suggested the rule be revised by incorporating a de minimis threshold. The commenter suggested the

rule should provide that a non-opinion audit be given to investors with less than a controlling interest (the commenter suggested less than 20% ownership as the measure) but at least $50,000 and a separate opinion audit only be required where the interest is at least $200,000.

The Board has determined not to adopt this modification for the following reasons. A financial statement audit provides the advantage of an independent, qualified and licensed third party attesting to the fair presentation of the CUSO's financial statements in accordance with generally accepted accounting principles as of a given date. A third party relies on this opinion in conducting its due diligence surrounding an investment decision. A non-opinion audit by either a licensed or unlicensed person does not provide that opinion the Board is seeking to guide credit union investment decisions.

CUSOs that must consolidate their financial statements with a parent credit union owner already receive a consolidated financial statement audit. Expanding the scope of that engagement to include a separate, CUSO-only financial statement audit does not double the cost. CUSOs that are not required to consolidate their financial statements with a parent credit union already must obtain a separate financial statement audit, so the current rule does not impose substantial, additional burden on CUSOs.

Finally, the Board notes that the numbering and placement of new or updated authorities in § 712.5 are different than were proposed. The final rule maintains the numbering and placement in the current rule by adding the two new subsections at the end of the existing rule, rather than in the middle. This should eliminate confusion where interested parties make reference to particular provisions in the future. The Board believes these changes are consistent with its ongoing efforts to reduce regulatory burden while assuring that credit unions operate in a safe and sound manner.

Regulatory Procedures

Regulatory Flexibility Act

As noted in the proposed rule, the Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. NCUA considers credit unions having less than ten million dollars in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87–2 as amended by IRPS 03–2. The proposed changes to the CUSO rule impose minimal compliance obligations by requiring credit unions to comply with certain one-time regulatory requirements concerning agreements with CUSOs and maintenance of separate corporate identities. Of the 3,599 credit unions (FCUs and FISCUs) with assets of less than ten million dollars that filed a form 5300 call report with NCUA as of December 31, 2007, only 195 reported any interest in a CUSO. Since approximately only 5.5% of credit unions meeting the small credit union definition reported having any interest in CUSOs of any type, NCUA has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that an RFA analysis is not required.

Paperwork Reduction Act

The final rule contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), NCUA submitted a copy of the proposed amendments as part of an information collection package to the Office of Management and Budget (OMB) for its review and approval of a modification of any existing collection of information. On November 25, 2008, the OMB approved the modification request and re-assigned the collection Control Number 3133–0149.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The major aspects of the rule apply only to federally-chartered credit unions. There is some impact on state chartered, federally-insured credit unions. By law, these institutions are already subject to numerous provisions of NCUA's rules, based on the agency's role as the insurer of member share accounts and the significant interest NCUA has in the safety and soundness of their operations. In developing the proposal and the final rule, NCUA worked closely with representatives of the state credit union regulatory community. The final rule incorporates a mechanism by which states may request an exemption from coverage of the rule for institutions in that state, provided certain criteria are met. In any event, the final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—-Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

12 CFR Part 712

Administrative practices and procedure, Credit, Credit unions, Investments, Reporting and recordkeeping requirements.

12 CFR Part 741

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 18, 2008.

Mary F. Rupp,

Secretary of the Board.

■ Accordingly, NCUA amends 12 CFR parts 712 and 741 as follows:

Part 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOs)

■ 1. The authority citation for part 712 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786.

■ 2. Amend § 712.1 by revising the last sentence to read as follows:

§ 712.1 What does this part cover?

* * * Sections 712.3(d)(3) and 712.4 of this part apply to state-chartered credit unions and their subsidiaries, as provided in § 741.222 of this chapter.

■ 3. Amend § 712.2 by adding a new paragraph (d)(3) to read as follows:

§ 712.2 How much can an FCU invest in or loan to CUSOs, and what parties may participate?

* * * * *

(d) * * *

(3) *Special rule in the case of less than adequately capitalized FCUs.* This paragraph (d)(3) applies in the case of either an FCU that is currently less than adequately capitalized, as determined under part 702, or where the making of an investment in a CUSO would render the FCU less than adequately capitalized under part 702. Before making an investment in a CUSO, the FCU must obtain prior written approval from the appropriate NCUA regional office if the making of the investment would result in an aggregate cash outlay, measured on a cumulative basis (regardless of how the investment is valued for accounting purposes) in an amount in excess of one percent of the credit union's paid in and unimpaired capital and surplus.

* * * * *

§ 712.3 [Amended]

■ 4. Amend § 712.3 as follows:

■ a. Amend paragraph (b) by removing the period at the end of the sentence and adding the phrase ''; *provided, however,* that with respect to any approved CUSO service, as set out in § 712.5, that also meets the description of services set out in § 701.30 of this chapter, this requirement is met if the CUSO primarily provides such services to persons who are eligible for membership in the FCU or are eligible for membership in credit unions contracting with the CUSO.'' in its place.

■ b. Revise paragraph (d)(3) to read as follows:

§ 712.3 What are the characteristics of and what requirements apply to CUSOs?

* * * * *

(d) * * *

(3)(i) Provide NCUA, its representatives, and the state credit union regulatory authority having jurisdiction over any federally insured, state-chartered credit union with an outstanding loan to, investment in or contractual agreement for products or services with the CUSO with complete access to any books and records of the CUSO and the ability to review CUSO internal controls, as deemed necessary by NCUA or the state credit union regulatory authority in carrying out their respective responsibilities under the Act and the relevant state credit union statute.

(ii) The effective date for compliance with this section is June 29, 2009.

* * * * *

■ 5. Amend § 712.5 as follows:

■ a. Amend paragraph (a)(2) by removing the word ''and'' after the semicolon;

■ b. Amend paragraph (a)(3) by adding ''and'' after the semicolon;

■ c. Add a new paragraph (a)(4);

■ d. Amend paragraph (b)(9) by removing the word ''and'' after the semicolon;

■ e. Amend paragraph (b)(10) by adding ''and'' after the semicolon;

■ f. Add a new paragraph (b)(11);

■ g. Amend paragraph (c) by removing the semicolon at the end of the sentence and replacing it with the phrase: '', including the authority to buy and sell participation interests in such loans;''

■ h. Amend paragraph (d) by removing the semicolon at the end of the sentence and replacing it with the phrase: '', including the authority to buy and sell participation interests in such loans;''

■ i. Amend paragraph (f)(5) by removing the word ''and'' after the semicolon ;

■ j. Amend paragraph (f)(6) by adding ''and'' after the semicolon;

■ k. Amend paragraph (h)(2) by removing the word ''and'' after the semicolon;

■ l. Amend paragraph (h)(3) by adding ''and'' after the semicolon;

■ m. Amend paragraph (j)(2) by removing the word ''and'' after the semicolon;

■ n. Amend paragraph (j)(3) by adding ''and'' after the semicolon;

■ o. Add new paragraphs (f)(7), (h)(4), and (j)(4) through (j)(6);

■ p. Amend paragraph (n) by removing the semicolon at the end of the sentence and replacing it with the phrase: '', including the authority to buy and sell participation interests in such loans;''

■ o. Add new paragraphs (s) and (t).

The additions read as follows:

§ 712.5 What activities and services are preapproved for CUSOs?

* * * * *

(a) * * *

(4) Stored value products.

(b) * * *

(11) Employee leasing services

* * * * *

(f) * * *

(7) Business counseling and consultant services;

* * * * *

(h) * * *

(4) Real estate settlement services;

* * * * *

(j) * * *

(4) Real estate settlement services;

(5) Purchase and servicing of non-performing loans; and

(6) Referral and processing of loan applications for members whose loan applications have been denied by the credit union;

* * * * *

(s) Credit card loan origination;

(t) Payroll processing services.

§ 712.7 [Removed and Reserved]

■ 6. Remove and reserve § 712.7.

■ 7. Add a new § 712.10 to read as follows:

§ 712.10 How can a state supervisory authority obtain an exemption for state chartered credit unions from compliance with § 712.3(d)(3)?

(a) The NCUA Board may exempt federally insured credit unions in a given state from compliance with § 712.3(d)(3) if the NCUA Board determines the laws and procedures available to the supervisory authority in that state are sufficient to provide NCUA with the degree of access to CUSO books and records it believes is necessary to evaluate the safety and soundness of credit unions having business relationships with CUSOs owned by credit union(s) chartered in that state.

(b) To obtain the exemption, the state supervisory authority must submit a copy of the legal authority pursuant to which it secures access to CUSO books and records to NCUA's regional office having responsibility for that state, along with all procedural and operational documentation supporting and describing the actual practices by which it implements and exercises the authority.

(c) The state supervisory authority must also provide the regional director with an assurance that NCUA examiners will be provided with co-extensive authority and will be allowed direct access to CUSO books and records at such times as NCUA, in its sole discretion, may determine necessary or appropriate. For purposes of this section, access includes the right to make and retain copies of any CUSO record, as to which NCUA will accord the same level of control and confidentiality that it uses with respect to all other examination-related materials it obtains in the course of its duties.

(d) The regional director will review the applicable authority, procedures and assurances and forward the exemption

request, along with the regional director's recommendation, to the NCUA Board for a final determination.

(e) For purposes of this section, whether an entity is a CUSO shall be determined in accordance with the definition set out in § 741.222 of this chapter.

PART 741—REQUIREMENTS FOR INSURANCE

■ 8. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1781–1790, and 1790d.

■ 9. Add a new § 741.222 to read as follows:

§ 741.222. Credit union service organizations.

(a) Any credit union that is insured pursuant to Title II of the Act must adhere to the requirements in § 712.3(d)(3) and § 712.4 of this chapter concerning agreements between credit unions and their credit union service organizations (CUSOs) and the requirement to maintain separate corporate identities. For purposes of this section, a CUSO is any entity in which a credit union has an ownership interest or to which a credit union has extended a loan and that is engaged primarily in providing products or services to credit unions or credit union members, or, in the case of checking and currency services, including check cashing services, sale of negotiable checks, money orders, and electronic transaction services, including international and domestic electronic fund transfers, to persons eligible for membership in any credit union having a loan, investment or contract with the entity.

(b) This section shall have no preemptive effect with respect to the laws or rules of any state providing for access to CUSO books and records or CUSO examination by credit union regulatory authorities.

(c) The effective date for compliance with this section is June 29, 2009.

[FR Doc. E8–30602 Filed 12–24–08; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0716; Airspace Docket No. 08–ASW–9]

Establishment of Low Altitude Area Navigation T–254; Houston, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This action delays the effective date for the establishment of the low altitude Area Navigation (RNAV) T-route, designated T–254, in the vicinity of the Houston, TX, terminal area until March 12, 2009. The FAA is taking this action to allow additional time for processing and charting.

DATES: *Effective Date:* 0901 UTC. The effective date of January 15, 2009, is delayed to March 12, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On November 18, 2008, the FAA published in the **Federal Register** a final rule establishing the low altitude RNAV route T–254, in the vicinity of the Houston, TX, terminal area (73 FR 68317). This rule was originally scheduled to become effective January 15, 2009; however, a need for additional internal processing requires a delay in the effective date until March 12, 2009.

The Rule

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes an RNAV T-Route in the vicinity of Houston, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Delay of Effective Date

■ The effective date of the final rule, Docket FAA–2008–0716; Airspace Docket 08–ASW–9, as published in the **Federal Register** on November 18, 2008 (73 FR 68317), is hereby delayed until March 12, 2009.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

* * * * *

Issued in Washington, DC, on December 12, 2008.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E8–30635 Filed 12–24–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2004–17005; Amendment No. 93–91]

RIN 2120–AI17

Washington, DC Metropolitan Area Special Flight Rules Area; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a recently published final rule entitled, ''Washington, DC Metropolitan Area Special Flight Rules Area.'' The rule codified special flight rules and airspace and flight restrictions for certain aircraft operations in the Washington, DC Metropolitan Area. A word in the codified text was incorrect. This document corrects that word.

DATES: The final rule and this correction will become effective on February 17, 2009.

FOR FURTHER INFORMATION CONTACT: Ellen Crum, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On December 16, 2008, the FAA published a final rule entitled, ''Washington, DC Metropolitan Area Special Flight Rules Area.'' An error appeared in § 93.335 Definitions, in the definition of the term ''Washington, DC Metropolitan Area Special Flight Rules Area (DC SFRA).''

Correction

In final rule FR Doc. E8–29711, published on December 16, 2008 (73 FR 76195), make the following correction.

§ 93.335 [Corrected]

■ On page 76214, in the first column, in the amendment for § 93.335, the definition for ''*Washington, DC Metropolitan Area Special Flight Rules Area (DC SFRA),*'' in the 10th line, remove the word ''radial'' and add in its place the word ''radius.''

Issued in Washington, DC, on December 19, 2008.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E8–30730 Filed 12–24–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 155 and 156

[Docket No. USCG–2001–9046]

RIN 1625–AB12

Tank Level or Pressure Monitoring Devices on Single-Hull Tank Ships and Single-Hull Tank Barges Carrying Oil or Oil Residue as Cargo

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing its regulations for tank level or pressure monitoring (TLPM) devices because devices that satisfy compliance requirements remain unavailable.

DATES: This final rule is effective January 28, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2001–9046 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Dolores Pyne-Mercier, Project Manager, Office of Standards Evaluation and Development, Project Development Division (CG–5232), Coast Guard, telephone 202–372–1093, or e-mail address, *Dolores.J.Pyne-Mercier@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations

FR Federal Register
NEPA National Environmental Policy Act of 1969
NPRM Notice of Proposed Rulemaking
NTTAA National Technology Transfer and Advancement Act
TLPM Tank Level or Pressure Monitoring

II. Background

A. Regulatory History

In September 2002, the Coast Guard promulgated tank level or pressure monitoring (TLPM) device regulations located in 33 CFR parts 155 and 156. (67 FR 58515). The Final Rule detailed TLPM performance criteria and described the vessels required to install and use TLPM devices by 2007.

To date, we have identified no devices meeting the performance criteria established in the final rule, and none have been submitted by industry for our evaluation. As a result, in July 2005, we published a Final Rule (70 FR 41614) suspending the regulations for TLPM devices for three years until July 21, 2008. In the final rule, we also solicited public comment on the status of TLPM technology development and alternatives to TLPM devices. In response, we received two comments supporting our suspension of the regulations for TLPM devices and no new information on TLPM devices or alternatives. We published another Final Rule (73 FR 23397) on May 5, 2008, extending the suspension for three additional years until May 5, 2011, to allow time for the current rulemaking process to be completed.

On June 30, 2008, we published a notice of proposed rulemaking entitled ''Tank Level or Pressure Monitoring Devices on Single-Hull Tank Ships and Single-Hull Tank Barges Carrying Oil or Oil Residue as Cargo'' in the **Federal Register** (73 FR 36825). We received 2 letters commenting on the proposed rule. Both commenters supported the Coast Guard's decision to remove the TLPM device regulations. No public meeting was requested and none was held.

B. Purpose

For a complete discussion of the background for this final rule, see the NPRM published on June 30, 2008 (73 FR 36825, 36826).

The Coast Guard is removing its regulations for TLPM devices because

devices that satisfy compliance requirements remain unavailable. As noted above in section II.A. ''Regulatory History,'' we published a final rule suspending Coast Guard regulations for TLPM devices with a request for public comments on the status of TLPM technology development and other means of detecting leaks from oil cargo tanks into the water. We received two comments supporting our suspension of the regulations for TLPM devices. We received no new information on TLPM devices or alternatives for detecting leaks into the water from single-hull tank vessels carrying oil or oil residue as cargo.

Based on the public response to the suspension, the absence of new information regarding TLPM devices or alternatives, and the results of a Congressionally-mandated study (available in the docket where indicated under **ADDRESSES**), the Coast Guard revisited the feasibility and practicality of retaining regulations for TLPM devices on single-hull tank vessels and concluded that it is appropriate to remove these regulations.

III. Discussion of Comments and Changes

We received two comments on the NPRM; both were in favor of the removal of the TLPM device requirement from the regulations. The Coast Guard has made no changes from the NPRM, save a minor edit to the authority citation for part 156.

IV. Regulatory Evaluation

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

A. Executive Order 12866

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Public comments on the NPRM are summarized in Part IV of this preamble. We received no public comments that would alter our assessment of impacts in the NPRM. We have adopted the assessment in the NPRM as final. See the ''Regulatory Evaluation'' section of the NPRM for the complete analysis.

This final rule removes the regulations for TLPM devices—a type of shipboard equipment that does not currently exist in the marketplace and which has no practical alternative. We conclude this rule will have no impact on industry.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

We concluded that removing the performance standards for TLPM devices and the requirements for their use will not have a significant economic impact on a substantial number of small entities since industry did not adopt or implement any TLPM provisions. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000)). This rule removes previously published rules on performance standards, and the use of TLPM devices falls into the category of vessel equipment and operation. Because the States may not regulate within these categories, preemption under Executive Order 13132 is not an issue.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in the preamble.

G. Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a ''significant energy action.'' Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with the applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation: Test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2. Figure 2–1, paragraph 34(d), of the Instruction and neither an environmental assessment nor an environmental impact statement is required. This rule involves the equipping of vessels. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 155

Alaska, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 156

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 155 and 156 as follows:

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

■ 1. The authority citation for 33 CFR Part 155 and the note following citation continue to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793. Sections 155.100 through 155.130, 150.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) are also issued under 33 U.S.C. 1903(b). Sections 155.480, 155.490, 155.750(e), and 155.775 are also issued under 46 U.S.C. 3703. Section 155.490 also issued under section 4110(b) of Pub. L. 101–380.

Note to Part 155: Additional requirements for vessels carrying oil or hazardous materials are contained in 46 CFR Parts 30 through 40, 150, 151, and 153.

§ 155.200 [Amended]

■ 2. In § 155.200, remove the definition for ''Sea State 5.''

§ 155.490 [Removed and Reserved]

■ 3. Remove and reserve § 155.490.

PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

■ 4. The authority citation for 33 CFR Part 156 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3703a, 3715; E.O. 11735, 3 CFR 1971–1975 Comp., p. 793. Section 156.120(bb) is also issued under 46 U.S.C. 3703.

§ 156.120 [Amended]

■ 5. In § 156.120, remove paragraph (ee).

Dated: December 17, 2008.

Brian M. Salerno,

Assistant Commandant for Marine Safety, Security and Stewardship, U.S. Coast Guard.

[FR Doc. E8–30803 Filed 12–24–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM07–9–00]

Review of FERC Form Nos. 6 and 6–Q

December 18, 2008.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice Terminating Proceeding.

SUMMARY: The Federal Energy Regulatory Commission is terminating its notice of inquiry regarding the need for changes or revisions to the Commission's reporting requirements. This notice specifically addresses FERC Form Nos. 6 (Annual Report of Oil Pipeline Companies) and 6–Q (Quarterly Report of Oil Pipeline Companies).

DATES: *Effective Date:* December 29, 2008.

FOR FURTHER INFORMATION CONTACT:
Jenifer Lucas (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8362. E-mail: *jenifer.lucas@ferc.gov.*
Dave Lengenfelder (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426, (202) 502–8351. E-mail: *david.lengenfelder@ferc.gov.*

SUPPLEMENTARY INFORMATION:

1. On February 15, 2007, the Commission issued a Notice of Inquiry (NOI) in this proceeding, seeking comments from filers and users of various financial forms, including FERC Form Nos. 6 (Annual Report of Oil Pipeline Companies) and 6–Q (Quarterly Report of Oil Pipeline Companies), addressing whether the forms should be modified.[1] The FERC Form No. 6 contains data such as a balance sheet, cost-of-service information, income statement, and

[1] *Assessment of Information Requirements for FERC Financial Forms,* FERC Stats. & Regs. ¶ 35,554 (2007).

statement of cash flow for oil pipeline companies. Similarly, the FERC Form No. 6–Q contains the same type of information but for each of the first three quarters of each year. Interested parties filed comments addressing possible modifications to the forms, and on July 18, 2007, the Commission's Staff conducted a public workshop to discuss the topic.

2. As discussed below, the Commission will not modify FERC Form Nos. 6 and 6–Q at this time. Accordingly, the Commission is terminating Docket No. RM07–9–000.[2]

Summary of Significant Comments

3. The Association of Oil Pipelines (AOPL), Shell Pipeline Company L.P., Enbridge, Inc., Plains Pipeline L.P., and Magellan Pipeline Company LLC (collectively, Carriers) argued for few if any changes to FERC Form No. 6. In contrast, the Air Transport Association of America, Inc., the Society for the Preservation of Oil Pipeline Shippers, Anadarko Petroleum Corporation, Crowley Energy Consulting and Tesoro Refining & Marketing Company (collectively, Shippers) sought significant changes to the information required by FERC Form No. 6.

4. The Carriers argue that the Commission has analyzed and either revised or affirmed the form repeatedly since 1994, most recently in 2006,[3] finding that it satisfies applicable ratemaking requirements and provides the information necessary for shippers to challenge the oil pipelines' rates. The Carriers emphasize that oil pipelines are required to file extensive information, including total annual cost of service, operating revenues, and throughput in barrels and barrel-miles. In the Carriers' view, this information is adequate to permit shippers to compare the level of an oil pipeline's cost of service with their rates, and to compare the shippers' own changes in rates to changes in average barrel-mile rates.

5. The Shippers contend that FERC Form No. 6 does not provide an adequate basis for supporting complaints regarding oil pipeline rates, and thus it impedes the Commission's statutory duty to monitor cost-based rates, analyze costs of different services and classes of assets, and compare costs across lines of business. In particular, Shippers argue that the current reporting system is not useful in an environment where certain oil pipelines may own several pipeline systems. At a minimum, assert Shippers, each oil pipeline reporting financial and rate data on more than one pipeline system (or more than one segment of a pipeline system) should be required to segregate cost and revenue information for each system.[4] Shippers maintain that this would facilitate examinations of possible cross-subsidies. Shippers further argue that oil pipelines should file workpapers that fully support the data reported on FERC Form No. 6, including cost-of-service calculations.

Commission Analysis

6. In Order No. 561, the Commission responded to Congress' direction that the Commission ''promulgate new regulations to provide a simplified and generally applicable ratemaking methodology for oil pipelines, and to streamline procedures in oil pipeline proceedings.'' [5] The Commission's regulations evidence this light-handed regulation in part by encouraging the settlement of disputes in oil pipeline rate matters.[6] Order No. 561 also established price caps for oil pipeline rates and instituted an annual indexing process for rates tied to the Producer Price Index for Finished Goods minus one percent.

7. The Commission has reviewed the comments addressing possible changes to FERC Form Nos. 6 and 6–Q. These forms provide cost and revenue data that are intended to be a screening tool used to assess on an ongoing basis the justness and reasonableness of an oil pipeline's rates. The information provided is not intended to be at the level of detail necessary to litigate a case. Rather, the information need only be of sufficient detail for a complainant to make a *prima facia* case that existing rates are not just and reasonable.[7] Indeed, the information provided in FERC Form No. 6 has been adequate to allow shippers over the last 10 years to file numerous complaints challenging rates.[8] Further, in a recent five-year review of the oil pipeline pricing index, the Commission's Staff was able to track industry cost changes by using data from the Annual Cost of Service Based Analysis Schedule.[9]

8. Additionally, the Commission has through various orders already revised FERC Form No. 6 to make carrier costs more transparent. For example, the Commission added the page 700, Annual Cost of Service Based Analysis Schedule, which includes the filer's operating and maintenance expenses, depreciation expense, AFUDC depreciation, amortization of deferred earnings, rate base, rate of return, income tax allowances, total cost of service, total operating revenues, and throughput in barrels and barrel-miles for the end of the current and previous calendar years.[10] In Order No. 571, moreover, the Commission rejected requests that the data reported on the Annual Cost of Service Based Analysis Schedule include separate cost of service information for each individual system, and explained that the schedule was not intended to require a pipeline to demonstrate with precision its cost-of-service attributed to each individual system it operates.[11] In this regard,

[2] Following the issuance of the NOI, the Commission issued a Notice of Proposed Rulemaking addressing FERC Form Nos. 2, 2–A, and 3–Q. On March 21, 2008, the Commission issued Order No. 710 revising these forms. *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines,* Order No. 710, 73 FR 19389 (April 10, 2008), FERC Stats & Regs. ¶ 31,267 (2008) *order on reh'g,* Order No. 710–A, 123 FERC ¶ 61,278 (2008). Additionally, on September 19, 2008, the Commission issued Order No. 715 revising FERC Form Nos. 1, 1–F, and 3–Q. *Revisions to Forms, Statements and Reporting Requirements for Electric Utilities and Licensees,* Order No. 715, 73 FR 58720 (October 7, 2008), FERC Stats. & Regs. ¶ 31,277 (2008). This order addresses the sole remaining aspect of the NOI: The financial forms relating to oil pipeline companies.

[3] *Five-Year Review of Oil Pipeline Pricing Index,* 114 FERC ¶ 61,293 (2006).

[4] FERC Form No. 6 reflects aggregated data. AOPL contends that providing cost-of-service and revenue information for each segment would be an undue burden because the oil pipeline companies do not break down costs by segment, and they would be forced to estimate amounts that they do not track separately.

[5] *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992,* Order No. 561, FERC Stats. & Regs. ¶ 30,985, at 30,940 (1993), *order on reh'g,* Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 (1994), *aff'd, Association of Oil Pipe Lines* v. *FERC,* 83 F.23d 1424 (D.C. Cir. 1996).

[6] 18 CFR 343.5.

[7] *Cost-of-Service Reporting and Filing Requirements for Oil Pipelines,* Order No. 571, FERC Stats. & Regs. ¶ 31,006, at 31,168–69 (1994), *aff'd, Association of Oil Pipe Lines* v. *FERC,* 83 F.23d 1424 (D.C. Cir. 1996).

[8] *See SFPP, L.P.,* 63 FERC ¶ 61,014 (1993); *Texaco Refining and Marketing, Inc.* v. *SFPP, LP,* 86 FERC ¶ 61,035 (1999); *ARCO Products Co.* v. *SFPP, L.P.,* 91 FERC ¶ 61,142 (2000); *ARCO a subsidiary of BP America, Inc.* v. *Calnev Pipe Line, L.L.C.,* 97 FERC ¶ 61,057 (2001); *Chevron Products Co.* v. *SFPP, L.P.,* 114 FERC ¶ 61,133 (2006); *Williams Energy Services, LLC* v. *Mid-America Pipeline Company, LLC,* 116 FERC ¶ 61,175 (2006). In setting these cases for hearing, the Commission based its finding on an analysis of the entire carrier system.

[9] *Five-Year Review of Oil Pricing Index,* 114 FERC ¶ 61,293 (2006).

[10] *See* Order No. 571, FERC Stats. & Regs. ¶ 31,006; *Revisions to and Electronic Filing of the FERC Form No. 6 and Related Uniform Systems of Account,* Order No. 620, FERC Stats. & Regs. ¶ 31,115 (2000), *order on reh'g,* Order No. 620–A, 94 FERC ¶ 61,130 (2001).

[11] Order No. 571, FERC Stats. & Regs. ¶ 31,006, at 31,168–69. *Accord Five-Year Review of Oil Pricing Index, 114 FERC ¶ 61,293, at P 51–52 (2006). See also* Order No. 620, FERC Stats. & Regs. ¶ 31,115, at 31,958–59 (''Consistent with our decision in Order No. 571, the Commission denies suggestions by shippers that pipelines be required to file separate cost of service information for each individual system and additional information specifying debt and equity components.'')

Shippers did not provide sufficient justification for the Commission to further modify the requirements of FERC Form Nos. 6 and 6–Q.

9. The Commission recognizes that FERC Form No. 6 contains only enough information for a threshold determination of whether the existing rates are just and reasonable. However, the Commission concludes that FERC Form Nos. 6 and 6–Q continue to provide sufficient information to allow shippers to file a complaint requesting a determination of the justness and reasonableness of a pipeline's rates. Accordingly, the Commission concludes that no changes to FERC Form Nos. 6 and 6–Q are warranted at this time, and the Commission terminates Docket No. RM07–9–000.

The Commission Orders

Docket No. RM07–9–000 is hereby terminated, as discussed in the body of this order.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30621 Filed 12–24–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0039]

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Triamcinolone Cream

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Modern Veterinary Therapeutics, LLC. The ANADA provides for veterinary prescription use of triamcinolone cream on dogs for topical treatment of allergic dermatitis and summer eczema.

DATES: This rule is effective December 29, 2008.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8197, e-mail: *john.harshman@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Modern Veterinary Therapeutics, LLC, 1550 Madruga Ave., suite 329, Coral Gables, FL 33146, filed ANADA 200–459 that provides for veterinary prescription use of VETAZINE (triamcinolone acetonide) Cream on dogs for topical treatment of allergic dermatitis and summer eczema. Modern Veterinary Therapeutics, LLC's VETAZINE Cream is approved as a generic copy of VETALOG Cream, sponsored by Fort Dodge Animal Health, A Division of Wyeth Holdings Corp., under NADA 46–146. The ANADA is approved as of November 13, 2008, and the regulations are amended in § 524.2481 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 524.2481, revise paragraphs (b), (c)(2), and (c)(3) to read as follows:

§ 524.2481 Triamcinolone cream.

* * * * *

(b) *Sponsor.* See Nos. 015914, 053501, and 054925 in § 510.600(c) of this chapter.

(c) * * *

(2) *Indications for use.* For topical treatment of allergic dermatitis and summer eczema.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: December 18, 2008.

William T. Flynn,

Acting Director, Center for Veterinary Medicine.

[FR Doc. E8–30694 Filed 12–24–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1314

[Docket No. DEA–298F]

RIN 1117–AB13

Combat Methamphetamine Epidemic Act of 2005: Fee for Self-Certification for Regulated Sellers of Scheduled Listed Chemical Products

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final rule.

SUMMARY: To comply with the requirement of the Controlled Substances Act that fees be set at a level to ensure the recovery of the full costs of operating the various aspects of the Diversion Control Program, this Final Rule establishes an annual self-certification fee for certain ''regulated sellers,'' that is, persons and entities selling scheduled listed chemical products at retail locations who are required to self-certify with DEA relative to compliance with certain requirements of the Combat Methamphetamine Epidemic Act of 2005 (CMEA). This Final Rule establishes the annual self-certification fee for regulated sellers who are not DEA pharmacy registrants.

DATES: *Effective Date:* February 1, 2009. The new fee will be in effect for all new applications electronically sent on or after the effective date and for all renewal applications electronically sent on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

The Drug Enforcement Administration (DEA) implements the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act (CSA) and the Controlled Substances Import and Export Act (21 U.S.C. 801–971), as amended. DEA publishes the implementing regulations for these statutes in Title 21 of the Code of Federal Regulations (CFR), Parts 1300 to 1399. These regulations are designed to ensure that there is a sufficient supply of controlled substances for legitimate medical, scientific, research, and industrial purposes and to deter the diversion of controlled substances to illegal purposes. The CSA mandates that DEA establish a closed system of control for manufacturing, distributing, and dispensing controlled substances. Any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances must register with DEA (unless exempt) and comply with the applicable requirements for the activity. The CSA as amended also requires DEA to regulate the manufacture and distribution of chemicals that may be used to manufacture controlled substances illegally. Listed chemicals that are classified as List I chemicals are important to the manufacture of controlled substances. Those classified as List II chemicals may be used to manufacture controlled substances.

On March 9, 2006, the President signed the Combat Methamphetamine Epidemic Act of 2005 (CMEA), which is Title VII of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109–177). The CMEA amends the CSA to change the regulations for selling nonprescription products that contain ephedrine, pseudoephedrine, phenylpropanolamine, their salts, optical isomers, and salts of optical isomers. DEA implemented the retail provisions of CMEA through an Interim Final Rule entitled ''Retail Sales of Scheduled Listed Chemical Products; Self-Certification of Regulated Sellers of Scheduled Listed Chemical Products'' published in the **Federal Register** September 26, 2006 (71 FR 56008; corrected at 71 FR 60609, October 13, 2006). In that Interim Final Rule, DEA extensively discussed its intent to issue a rulemaking to establish the certification fee for regulated sellers of scheduled listed chemical products and the methodology for calculating fees (see specifically 71 FR 56013–56015, September 26, 2006; corrected at 71 FR 60609, October 13, 2006). To this end, DEA published a Notice of Proposed Rulemaking proposing self-certification fees for regulated sellers selling scheduled listed chemical products at retail on October 1, 2007 (72 FR 55712). This rulemaking finalizes that Notice of Proposed Rulemaking.

Section 886a of the CSA defines the Diversion Control Program as ''the controlled substance and chemical diversion control activities of the Drug Enforcement Administration,'' which are further defined as the ''activities related to the registration and control of the manufacture, distribution and dispensing, importation and exportation of controlled substances and listed chemicals.'' The CSA also states that reimbursements from the Diversion Control Fee Account '' * * * shall be made without distinguishing between expenses related to controlled substances activities and expenses related to chemical activities.'' [Pub. L. 108–447 Consolidated Appropriations Act of 2005]

In addition, Section 111(b)(3) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993 (Pub. L. 102–395), codified at 21 U.S.C. 886a(3), requires that ''fees charged by the Drug Enforcement Administration under its diversion control program shall be set at a level that ensures the recovery of the full costs of operating the various aspects of that program.''

CMEA implements new requirements governing the sale of scheduled listed chemical products, defined as nonprescription drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine. As part of these requirements, CMEA requires certification for all regulated sellers of scheduled listed chemical products, defining regulated seller to mean a retail distributor (including a pharmacy and mobile retail vendors). The CMEA requires that on and after September 30, 2006, a regulated seller or any of its employees must not sell scheduled listed chemical products unless it has certified to DEA, through DEA's Web site. The certification requires the regulated seller to confirm the following:

- Its employees who will be engaged in the sale of scheduled listed chemical products have undergone training regarding provisions of CMEA.
- Records of the training are maintained.
- Without regard to the number of transactions, a regulated seller may not in a single calendar day sell any purchaser more than 3.6 grams of ephedrine base, 3.6 grams of pseudoephedrine base, or 3.6 grams of phenylpropanolamine base in scheduled listed chemical products. (A mobile retail vendor may not in any 30-day period sell an individual purchaser more than 7.5 grams ephedrine base, 7.5 grams pseudoephedrine base, or 7.5 grams phenylpropanolamine base.)
- Nonliquid forms are packaged as required.
- Scheduled listed chemical products are stored behind the counter or in a locked cabinet.
- A written or electronic logbook containing the required information on sales of scheduled listed chemical products is maintained.
- The logbook information will be disclosed only to Federal, State, or local law enforcement and only to ensure compliance with Title 21 of the United States Code or to facilitate a product recall.

The regulated seller must train its employees and certify before either the seller or individual employees may sell scheduled listed chemical products. The certification is subject to the provisions of 18 U.S.C. 1001. A regulated seller who knowingly or willfully certifies to facts that are not true is subject to fines and imprisonment.

The CMEA also exempts retail distributors from registration requirements under the CSA; however, in practice, retail distributors have not previously registered with DEA because they limited their sales to below threshold quantities and to products sold in blister packs.

On October 1, 2007, DEA published a Notice of Proposed Rulemaking outlining the calculations for the proposed fee and compliance requirements for the self-certification fee (72 FR 55712).

II. Comments Received

Following publication of the October 1, 2007, Notice of Proposed Rulemaking, DEA received seven comments. Comments generally supported DEA's proposed certification fee approach and methodology and DEA's exemption of regulated sellers of scheduled listed chemical products who already maintain an active DEA registration as a pharmacy to dispense controlled substances. Five of the comments were from pharmaceutical associations; one comment was from a large chain pharmacy, and one comment was from an individual.

Fee and fee structure: Commenters generally supported DEA's proposed fee of $16 to self-certify and supported DEA's calculation of this fee based on the overall program costs. One commenter noted that this methodology

distributes the program costs to all sellers. Several commenters noted that the fee did not represent a burdensome amount. DEA agrees that the $16 proposed fee, finalized at $21, will not constitute a financial burden on regulated sellers and adds that businesses for which the self-certification fee would have been a barrier have stopped carrying the products due to other compliance costs associated with CMEA. Several commenters specifically noted their opposition to calculating the self-certification fee based on business size or overall volume of sales. Commenters questioned whether DEA had the statutory authority to collect such information, and noted that such collection would be administratively intensive, thereby further increasing fees charged. DEA also notes that it does not have the statutory authority or resources to be investigating these business details of regulated sellers. One commenter, who noted that it did not believe that DEA has this statutory authority to collect such information, also added that even if DEA had the statutory authority to collect the type of information necessary to enable this type of fee structure, it believed that the administrative burden of collecting this information would force an increase in self-certification fees to cover such administrative costs. The commenter therefore opposed this methodology on both grounds.

Fee exemption for registrants registered to dispense controlled substances: All seven commenters supported the fee exemption for regulated sellers who already maintain an annual registration to dispense controlled substances, i.e., a pharmacy registration. In the Notice of Proposed Rulemaking, DEA described the fee exemption for this group of registrants who already pay an annual fee or annual fee equivalent to support the operations of the Diversion Control Program.

Harmonization of registration and self-certification: Related to these comments, five commenters requested that DEA harmonize the self-certification and annual registration/reregistration process. Currently the majority of DEA registrants—practitioners (which includes pharmacies)—renew their registration with DEA every three years and pay a three-year fee to support the operations of the Diversion Control Program. DEA periodically recalculates the fee schedule for all registrants to ensure compliance with the statutory requirement that the full costs of operating the various aspects of the Diversion Control Program are supported through registration fees. Because self-certification occurs annually and registration of practitioners, including pharmacies, occurs every three years, there is no way to combine these two processes. That is, because the time frames are not concurrent, DEA cannot harmonize the renewal of self-certification and registration/reregistration for pharmacies at this time. DEA has made every effort to provide as much harmonization as possible by permitting those pharmacies who register with DEA through the chain registration process to also self-certify using that process. Furthermore, when requested by individual registrants, DEA has endeavored to allow the self-certification to expire in the same month, but not necessarily the same year, as the DEA registration.

DEA is considering whether to revise the time period for registration of practitioners (for example, requiring registration on an annual basis). If DEA pursues this course of action, it will publish a separate rulemaking requesting public comment on such a change.

Reminder of self-certification requirement: One commenter suggested that DEA develop an annual outreach program to remind regulated sellers of their annual self-certification requirement. Because self-certification is a certification by the regulated seller of compliance with the requirements of CMEA, DEA believes that it is the responsibility of the regulated seller to obtain and maintain their self-certification in good standing. Congress indicated in CMEA that self-certification is the responsibility of the regulated seller and strictly limited DEA involvement in the self-certification process (21 U.S.C. 830(e)(1)(B)(iii)).

Signature of self-certification: In the Notice of Proposed Rulemaking DEA noted that it had previously requested comments regarding who should be authorized to sign the self-certification for the regulated seller, given that the person must be in a position to confirm all the self-certification requirements listed above. Two commenters responded to the request. Both commenters suggested that the manager of the regulated seller be authorized to sign the self-certification for the regulated seller. DEA appreciates these responses and will address this specific issue in a separate rulemaking, as this Final Rule is intended only to address the self-certification fee and not other aspects of the self-certification process.

Waiver of self-certification fee for distributors of List I chemicals: One commenter requested that DEA consider waiving the self-certification fee for entities that own both distributors of List I chemicals and retailers of controlled substances (e.g., non-pharmacy retailers). DEA proposed the waiver of the self-certification fee for retail pharmacies who already maintain a registration with DEA because the retail sale of scheduled listed chemical products is essentially the same activity as dispensing (that is, sale at retail) of controlled substances. Thus it makes sense to exempt this category of registered regulated sellers because the activities are in fact similar. However, the distribution of List I chemicals at the non-retail level is not a similar activity to retail dispensing or sales to individual purchasers. DEA also notes that self-certification is only required for retail (not wholesale) distributors of scheduled listed chemical products. If, as the commenter claimed, there are entities that distribute List I chemical products and sell such products at the retail level, then even prior to enactment of CMEA such entities would have been required to maintain two separate registrations—one as a retail distributor and one as a non-retail distributor. Accordingly, the self-certification fee is not waived for non-retail distributors of List I chemicals.

Enforcement costs: Finally, one commenter observed that the calculation of the self-certification fee in the Notice of Proposed Rulemaking did not include any enforcement costs, adding that this omission was ''astonishingly optimistic'' and suggesting that DEA include a small amount of anticipated enforcement costs to the overall fee calculation, and that doing so ''still would not make it burdensome.'' As DEA noted in the Notice of Proposed Rulemaking, the self-certification fee included in this Final Rule does not include DEA activities associated with enforcement and judicial proceedings. CMEA gives DEA the authority to prohibit a regulated seller from selling scheduled listed chemical products for certain violations of CMEA. Following such an order, the affected regulated seller is entitled to an administrative hearing (if requested in a timely manner). While the costs of these enforcement activities and the subsequent proceedings must be supported through fees pursuant to the statutory requirements previously described above, because DEA is uncertain of the resources required and the likely costs of these activities, these costs are not reflected in the self-certification fee contained in this Final Rule. Once DEA is able to determine the

frequency of use of these tools and their associated costs, these costs will be recovered through fees associated with self-certification as established in future rulemakings.

III. Self-Certification Fee

DEA considers the self-certification requirements of the CMEA to fall within the legal definition of controlled substance and chemical diversion control activities as governed by section 886a of the CSA (see above). Accordingly, these activities fall under the general operation of the Diversion Control Program and are subject to the requirements of the Appropriations Act of 1993 that mandates that fees charged shall be set at a level that ensures the recovery of the full costs of operating the various aspects of the Diversion Control Program. The self-certification requirements of CMEA fall under these ''various aspects.'' Therefore, by this Final Rule DEA will charge a fee for each self-certification to comply with these statutory requirements and ensure that the full costs of operating the Diversion Control Program are covered by fees as required by law.

The fee for certification will be applied to all associated costs, including the initial one-time costs of setting up the certification program, Web site, and programmatic infrastructure, as well as ongoing costs associated with the provision of certifications, call center support, maintenance of the self-certification system, printing costs for certificates that regulated sellers cannot print, financial management, and other related costs. DEA has established a program to train its employees to provide information regarding, and accept, certifications and must establish the infrastructure necessary for the program. Required systems include creation of history, renewal cycles, investigative tools, business validation rules, and development and maintenance of the self-certification Web site.

As discussed previously, other DEA activities associated with self-certification and compliance with CMEA include enforcement and judicial proceedings. CMEA gives DEA the authority to prohibit a regulated seller from selling scheduled listed chemical products for certain violations of CMEA. If DEA issues an order to a regulated seller prohibiting that regulated seller from selling scheduled listed chemical products, the regulated seller is entitled to an administrative hearing if the seller files a timely request for a hearing. The costs of these enforcement activities and the subsequent proceedings must be supported through fees pursuant to the above described statutory requirements. However, these costs are not reflected in the self-certification fees contained in this rulemaking, as DEA is uncertain of their utilization. Once DEA is able to determine the frequency of use of these tools and their associated costs, these costs will be recovered through fees associated with self-certification as established in future rulemakings.

Regulated sellers submit a certification online via the DEA self-certification Web site and will pay a fee by credit card at the time of each certification. DEA calculated this fee based on estimated set-up costs in Fiscal Year 2006 ($93,369) and Fiscal Years 2007 and 2008 operating and maintenance costs ($1,338,484 and $808,643, respectively) totaling $2,240,496, as shown in Table 1 below. The initial systems development and set-up costs will not be repeated in subsequent years. Thus, the total amount to be recovered for Fiscal Years 2006 through 2008 is $2,240,496. Total annual costs associated with operating the certification process include staff costs, operational and administrative costs, Web hosting, monitoring and maintenance costs (including hardware and software maintenance), and annual inflation adjustments.

To calculate the fee, DEA divided the total costs for Fiscal Years 2006 through 2008 by the anticipated population of affected regulated sellers of 55,000. As of October 27, 2008, 53,989 retailers had self-certified that they were in compliance with the rule. In making the final fee calculation, DEA doubled the number of self-certified sellers from 55,000 to 110,000 to reflect one self-certification and one renewal by each person during Fiscal Years 2006–2008, the time period for which fees were calculated. DEA notes that it has adjusted the population of regulated sellers to accurately characterize the current number of persons self-certified with DEA. This adjustment has resulted in a higher cost per self-certified location than DEA proposed in the Notice of Proposed Rulemaking. All costs are shown in the table below for Fiscal Years 2006 through 2008. The self-certification costs reflect the cost per each self-certification per each facility as required by CMEA.

To minimize administrative and collection burdens, it is DEA's policy to round all fees up to the nearest dollar when calculating fees. This is done to ensure that the full cost of the Diversion Control Program is collected as mandated by statute. Therefore, the fee for self-certifications will be $21.00.

TABLE 1—SELF-CERTIFICATION COSTS AND FEE CALCULATION

Project detail	2006*	2007	2008	Total cost
Planning (1)	$3,029	$36,343	$37,002	$76,373
Design, Development, Deployment (2)	$43,512	$703,863	$71,662	$819,037
Call Center, Finance, Mail Room, Printing (3)	$35,423	$425,075	$432,777	$893,275
Maintenance (4)	$11,405	$173,203	$176,341	$360,949
Enhancements (5)	.....	.....	$90,861	$90,861
Total	$93,369	$1,338,484	$808,643	$2,240,496
Population	.....	55,000	55,000	.....
Cost per certification (= total cost/population)	.....	$26.04	$14.71	$20.38

*2006 is only one month of operations.
Planning*
Design, Development, Deployment.
Creation of self-certification system**
Operation support includes:
5 FTE, 3% of their time; 1 D/I 5% of their time.
10% allocation of effort, 2 months planning; 6 months development; 2 months testing, Q/A, CM, C&A, deployment.
Call center, finance, distribution and printing operations.
** Self-certification system includes creation of history, renewal cycles, investigative tools, business validation rules.

TABLE 2—CALCULATION OF FEE

Cost for FY2006–2008	No. estimated to self-certify	Self-certification and one renewal		Fee for self-certification
$2,241,000	/(55,000	* 2)	= $20.38	= $21.00

All regulated sellers will pay the $21 fee upon annual self-certification to the DEA with the exception of those regulated sellers who already maintain an active registration with DEA to dispense controlled substances, *i.e.*, pharmacy registrants. In making this exception, as described in further detail in the Notice of Proposed Rulemaking (72 FR 55712), DEA notes that many of the regulated sellers affected by the self-certification requirement already are registered with DEA to dispense controlled substances and therefore already pay a registration/reregistration fee to DEA. The CSA requires that all manufacturers, importers, exporters, distributors and dispensers (*e.g.*, pharmacies) of controlled substances and List I chemicals obtain an annual registration with DEA. This process also is under the administration of the Diversion Control Program. For example, pharmacies registered with DEA to dispense controlled substances pay a three-year registration fee of $551 (an annual equivalent of $184). This annual (or three-year) registration fee supports the operations of the Diversion Control Program, including program priorities and field management oversight; coordination of major investigations; drafting and promulgating of regulations relating to the enforcement of the CSA and other legislation; advice and leadership on state legislation/regulation; legal control of drugs and chemicals not previously under Federal control; control of imports and exports of licit controlled substances and chemicals; program resource planning and allocation, and investigation, inspection, and cooperative efforts with other law enforcement entities and the regulated industries, among other activities.

While these existing registrants are required by the CMEA to self-certify with DEA if selling scheduled listed chemical products, the self-certification fee will be waived upon submission of an active DEA pharmacy registration number in good standing because these registrants already pay an annual fee (or annual fee equivalent) to support the operations of the Diversion Control Program.

DEA remains uncertain of the anticipated costs associated with enforcement activities related to self-certification. Investigative and other activities designed to ascertain and ensure compliance with CMEA will require funding in excess of one-time set-up and maintenance expenses. DEA anticipates publishing a Notice of Proposed Rulemaking to revise the fee for self-certification in the near future. That rule will address costs related to enforcement activities, as well as other expenses related to self-certification of regulated sellers of scheduled listed chemical products. As with all fees collected by DEA, fees collected beyond Fiscal Year 2008, the projected end of the three-year cycle discussed above, will ensure recovery of the full costs of the various aspects of the Diversion Control Program as mandated by statute (21 U.S.C. 886a). Those various aspects of the Diversion Control Program could include, among other things, costs of enforcement activities associated with self-certification.

Methodology Regarding Establishment of Fee

CMEA specifically states that a separate certification is required for each separate location at which scheduled listed chemical products are sold. As such, mobile retail vendors must certify for each location at which sales transactions occur, *e.g.*, a fairground one week, a convention center the next, etc. Similarly, large corporate chains such as chain pharmacies must certify for each separate location at which scheduled listed chemical products are sold. Each location must self-certify for itself, although DEA has established a process for the self-certification of pharmacies participating in DEA's chain pharmacy renewal program.

Additionally, CMEA mandates self-certification for all regulated sellers irrespective of the extent such entities or persons handle scheduled listed chemical products. Accordingly, DEA may not alter the fee structure to account for the extent to which self-certifiers handle these products, for example adjusting self-certification fees according to sales volume or size of establishment. DEA notes, as discussed above, that all commenters supported this position.

Finally, as referenced earlier in this rulemaking, CMEA requires that all persons selling scheduled listed chemical products at retail self-certify to DEA, regardless of whether those persons are already registered with DEA to handle controlled substances or List I chemicals.

In its Interim Final Rule establishing self-certification and other requirements (71 FR 56008, September 26, 2006; corrected at 71 FR 60609, October 13, 2006), DEA established that certification must be renewed annually. However, to spread the population of self-certifiers throughout the year (*i.e.*, to prevent all persons who are self-certified from continuing to renew in the month of September every year), DEA in its Interim Final Rule indicated that it will assign self-certifiers to one of 12 groups. Each group will have an expiration date that will be the last day of a month from 12 to 23 months after the initial filing. The expiration date is contained in each regulated seller's self-certification certificate. After the second certification, regulated sellers will be required to certify annually. Thus, between September 30, 2006, and the end of Fiscal Year 2008 on September 30, 2008, all self-certifiers will have initially self-certified and renewed their certification once, assuming they continue to sell scheduled listed chemical products at retail. Payment of the self-certification fee will be completed at the same time as self-certification.

Regulatory Certifications

Regulatory Flexibility Act

The Acting Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. As discussed previously, DEA has adjusted the population of regulated sellers to accurately characterize the current number of persons self-certified with DEA. This adjustment has resulted in a higher cost per self-certified location ($21) than DEA proposed in the Notice of Proposed Rulemaking ($16).

The Final Rule will affect a substantial number of small entities, but

will not have a significant economic impact. The fee is minimal—$21 a year. The smallest firms potentially covered are general merchandise stores (NAICS 45299) where the average sales of the smallest firms are $60,000 a year according to the 2002 Retail Trade-Subject Series of the Economic Census. The smallest firms in the other sectors (NAICS 44511 (grocery stores), 44512 (convenience stores), 44611 (drug stores), 44711 (gas stations with convenience stores)), except for discount department stores (NAICS 452112) and superstores (NAICS 45291), have annual sales of between $120,000 and $150,000. There are no discount department stores or superstores with annual sales of less than $1 million and $5 million, respectively. The annual fee, therefore, would represent less than 0.05 percent of sales for the smallest store and generally about 0.01 percent of sales, which does not impose a significant economic impact.

Executive Order 12866

The Acting Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 section 1(b). It has been determined that this is a significant regulatory action. Therefore, this action has been reviewed by the Office of Management and Budget.

Regulated Sellers. As of October 27, 2008, 53,989 retailers had self-certified with DEA. Table 3 presents the number of retailers by sector and indicates whether they have indicated that they are DEA registrants.

TABLE 3—SECTORS SELLING SCHEDULED LISTED CHEMICAL PRODUCTS

NAICS	Registrants certified	Non-registrants certified
44511 Grocery stores	3,781	850
44611 Pharmacy and drug stores	27,678	500
452112 Discount Department Stores	1,777	25
45291 Warehouse Clubs and Superstores	4,373	6
Subtotal	37,609	1,381
44512 Convenience stores	3	5,499
44711 Gas Stations with convenience stores	0	9,020
45299 All other general merchandise stores	9	214
Other	42	212
Total	37,663	16,326

Costs/Benefits. As discussed in the previous sections, DEA has estimated costs of $2,240,496 for Fiscal Years 2006 through 2008 for DEA to establish and support the regulated seller self-certification program, which CMEA mandates. As required by law, this cost will be recovered from regulated sellers through a self-certification fee. As noted in the previous section, the fee imposes a minimal burden on regulated sellers. CMEA requires self-certification as a condition of selling these products. The fee will allow DEA to operate a program needed to permit regulated sellers to continue offering scheduled listed chemical products to their customers.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $120 million or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1314

Drug traffic control, Reporting and recordkeeping requirements.

■ For the reasons set out above, 21 CFR Part 1314 is amended as follows:

PART 1314—RETAIL SALE OF SCHEDULED LISTED CHEMICAL PRODUCTS

■ 1. The authority citation for Part 1314 is revised to read as follows:

Authority: 21 U.S.C. 802, 830, 842, 871(b), 875, 877, 886a.

■ 2. Section 1314.42 is added to read as follows:

§ 1314.42 Self-certification fee; time and method of fee payment.

(a) A regulated seller must pay a fee for each self-certification. For each initial application to self-certify, and for the renewal of each existing self-certification, a regulated seller shall pay a fee of $21.

(b) The fee for self-certification shall be waived for any person holding a current, DEA registration in good standing as a pharmacy to dispense controlled substances.

(c) A regulated seller shall pay the fee at the time of self-certification.

(d) Payment shall be made by credit card.

(e) The self-certification fee is not refundable.

December 18, 2008.

Michele M. Leonhart,

Acting Administrator.

[FR Doc. E8–30800 Filed 12–24–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 180

Consolidated HUD Hearing Procedures for Civil Rights Matters

CFR Correction

In title 24 of the Code of Federal Regulations, parts 0 to 199, revised as of April 1, 2008, on pages 733 and 734, in § 180.670, remove paragraphs (b)(3)(iii)(A) through (b)(3)(iii)(C).

[FR Doc. E8–30942 Filed 12–24–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9442]

RIN 1545–BA11

Consolidated Returns; Intercompany Obligations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 1502 of the Internal Revenue Code (Code). The regulations provide guidance regarding the treatment of transactions involving obligations between members of a consolidated group. These final regulations will affect affiliated groups of corporations filing consolidated returns.

DATES: *Effective Date:* These regulations are effective on *December 24, 2008*.

Applicability Date: For dates of applicability, see §§ 1.1502–13(g)(8) and 1.1502–28(d).

FOR FURTHER INFORMATION CONTACT: Frances Kelly, (202) 622–7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2007, the IRS and the Treasury Department published a notice of proposed rulemaking (REG–107592–00) in the **Federal Register** (72 FR 55139) (the 2007 Proposed Regulations) which proposed to amend § 1.1502–13(g) (regarding the treatment of transactions involving obligations between members of a consolidated group) and to add § 1.1502–13(e)(2)(ii)(C) (regarding the treatment of certain transactions involving the provision of insurance between members of a consolidated group). The 2007 Proposed Regulations replaced an earlier proposal (REG–105964–98) [63 FR 70354], published in the **Federal Register** on December 21, 1998, which was withdrawn.

On February 25, 2008, the IRS and the Treasury Department published a notice (Announcement 2008–25) in the **Federal Register** (73 FR 9972) withdrawing the portion of the 2007 Proposed Regulations relating to the treatment of intercompany insurance transactions. No public hearing regarding the remaining portion of the 2007 Proposed Regulations was requested or held. However, written, electronic, and oral comments were received. After consideration of all of the comments, the 2007 Proposed Regulations are adopted as revised by this Treasury decision. The principal comments and changes are discussed in this preamble.

Explanation of Provisions

Former Regulations Under § 1.1502–13(g) (the Former Regulations)

An intercompany obligation is generally defined as an obligation between members of a consolidated group, but only for the period during which both the creditor and debtor are members of the group. The Former Regulations under § 1.1502–13(g) (the 1995 regulations and the 1998 proposed regulations, as in effect before these final regulations), prescribe rules relating to the treatment of transactions involving such obligations, and apply generally to three broad categories of transactions; transactions in which an obligation between a group member and a nonmember becomes an intercompany obligation (inbound transactions), transactions in which an intercompany obligation ceases to be an intercompany obligation (outbound transactions), and transactions in which an intercompany obligation is assigned or extinguished within the consolidated group (intragroup transactions).

For all three types of transactions, the intercompany obligation is treated as satisfied and, if it remains outstanding, reissued as a new obligation (the deemed satisfaction-reissuance model).

Significant Changes Made by the 2007 Proposed Regulations

The 2007 Proposed Regulations make several significant changes to the Former Regulations, principally with respect to intragroup and outbound transactions.

First, the 2007 Proposed Regulations simplify the mechanics of the deemed satisfaction-reissuance model by separating the deemed transactions from the actual transaction. In general, the new model deems the following sequence of events to occur immediately before, and independently of, the actual transaction: (i) the debtor is deemed to satisfy the obligation for a cash amount equal to the obligation's fair market value, and (ii) the debtor is deemed to immediately reissue the obligation to the original creditor for that same cash amount. The parties are then treated as engaging in the actual transaction but with the new obligation.

Second, the 2007 Proposed Regulations provide that for transactions where it is appropriate to require a deemed satisfaction and reissuance, the intercompany obligation generally should be deemed satisfied and reissued for its fair market value (rather than issue price determined under the original issue discount principles of sections 1273 and 1274).

Third, the 2007 Proposed Regulations narrow the scope of intragroup and outbound transactions that trigger the deemed satisfaction-reissuance model by providing a number of exceptions to its application. A deemed satisfaction and reissuance generally is not required for these excepted transactions either because it is not necessary to apply the deemed satisfaction-reissuance model to carry out the purposes of § 1.1502–13(g) or because the burdens associated with valuing the obligation or applying the mechanics of the deemed satisfaction-reissuance model outweigh the benefits achieved by its application.

Finally, the 2007 Proposed Regulations include two anti-abuse rules, the ''material tax benefit rule'' and the ''off-market issuance rule,'' which are intended to prevent distortions of consolidated taxable income resulting from the shifting of built-in items from intercompany obligations, or from the issuance of obligations at a materially off-market rate of interest through the manipulation of a member's tax attributes or stock basis. These rules are aimed at intragroup transactions otherwise excepted from the deemed satisfaction-reissuance model (to ensure that the exceptions cannot be used to distort consolidated taxable income

through intragroup transactions) and similar direct lending transactions.

General Comments

In general, commentators have been supportive of the 2007 Proposed Regulations, particularly with respect to the simplified mechanics of the deemed satisfaction-reissuance model and the availability of exceptions to its application. However, concerns have been raised regarding the application of the material tax benefit rule and the off-market issuance rule. The principal comments made with respect to these rules and other significant provisions, as well as the changes made in the final regulations in response to these comments, are discussed in this preamble.

A. Anti-Abuse Rules

As proposed, the material tax benefit rule generally applies to an intragroup assignment or extinguishment otherwise excepted from the deemed satisfaction-reissuance model. Under this rule, if, at the time of the assignment or extinguishment, it is reasonably foreseeable that the shifting of built-in items from an intercompany obligation between members will secure a material tax benefit, the intercompany transaction will be subject to the deemed satisfaction-reissuance model.

The proposed off-market issuance rule generally applies if an intercompany obligation is issued at a materially off-market rate of interest, and at the time of issuance, it is reasonably foreseeable that the shifting of built-in items from the obligation will secure a material tax benefit. In such cases, the intercompany obligation will be treated as originally issued for its fair market value, and any difference between the amount loaned and the fair market value of the obligation will be treated as transferred between the creditor member and the debtor member, as appropriate (for example, as a distribution or a contribution to capital).

While acknowledging certain benefits of the ''reasonably foreseeable'' test, commentators believed that it would be difficult to apply because the results of the test would not be easily determined. These commentators suggested that, for purposes of determining the applicability of each of the rules, the ''reasonably foreseeable'' test be replaced with a test that placed more emphasis on the intent of the parties at the time of the transaction (or issuance). Specifically, they recommended that the rules apply if ''a principal purpose'' of the transaction (or the issuance) was to secure a material tax benefit. If such a test were adopted, the commentators also thought it appropriate to provide certain pro-government presumptions in cases where the facts surrounding the transaction suggested such intent.

These final regulations adopt the commentators' suggestions that the rules should be ''intent-based.'' However, consistent with other consolidated return anti-abuse rules, these final regulations provide that the rules' application will be determined based upon a ''with a view'' standard and eliminate the requirement that the tax benefit to be secured by the transaction (or issuance) be material. In addition, because the IRS and the Treasury Department remain concerned about distortions that could result from transfers of intercompany obligations in section 351 exchanges that are excepted from the deemed satisfaction and reissuance model, these final regulations also adopt more specific rules regarding such transfers (described in part C.3.a. of this Preamble).

B. Deemed Satisfaction and Reissuance for Fair Market Value

Commentators were generally supportive of the 2007 Proposed Regulations' use of fair market value as the amount for which an intercompany obligation is deemed satisfied and reissued. However, commentators also noted the difficulty in valuing intercompany obligations. Based upon these comments, the IRS and the Treasury Department are continuing to study whether it is appropriate to include certain simplifying presumptions in determining value, and comments are requested in this regard.

C. Exceptions and Related Provisions

1. Overlap of Exceptions and Deemed Exchanges Under § 1.1001–3

The 2007 Proposed Regulations provide a number of special rules for transactions in which intercompany debt is exchanged for newly issued intercompany debt. With respect to these intragroup debt-for-debt exchanges, the newly issued obligation generally is treated as issued for its fair market value, and the intercompany debt is deemed satisfied and reissued for its fair market value.

Commentators questioned whether this latter rule applied only in cases in which the intragroup debt-for-debt exchange involved a single issuer or also in cases in which the obligations had different issuers. The requirement is intended to apply in both such cases. Because the language of the 2007 Proposed Regulations encompasses both of these situations, this rule has been retained without change.

However, the 2007 Proposed Regulations also contain an exception to the deemed satisfaction-reissuance model for certain routine debt modifications involving a single issuer (the routine modification exception). This exception applies if all of the rights and obligations under an intercompany obligation are extinguished in an exchange (or deemed exchange under § 1.1001–3) for a newly issued intercompany obligation, and the issue price of the new obligation equals both the adjusted issue price and basis of the extinguished obligation.

In addition to the routine modification exception, the 2007 Proposed Regulations except from the deemed satisfaction-reissuance model many transactions that involve the assumption of a debtor member's obligations under an intercompany obligation (for example, an assumption of an intercompany obligation in connection with an intercompany nonrecognition transaction). A number of commentators noted that, in some cases, these assumption transactions also may be a significant modification of the instrument resulting in a deemed exchange under § 1.1001–3. In such cases, commentators questioned how the deemed exchange interacted with the various exceptions to the deemed satisfaction-reissuance model.

The IRS and the Treasury Department believe that a deemed exchange under § 1.1001–3 that results from an assumption transaction should be subject to the same set of rules and exceptions as apply to an actual two-party exchange of a debt instrument. Thus, even if the assumption transaction is excepted from the deemed satisfaction-reissuance model, any deemed exchange resulting from the assumption would be a triggering transaction potentially subject to the model. However, in most such cases the deemed exchange will generally qualify for the routine modification exception and thus not require a deemed satisfaction-reissuance.

Accordingly, these final regulations clarify that the routine modification exception applies to a deemed exchange of intercompany debt for intercompany debt that occurs under § 1.1001–3 as a result of an assumption transaction. Specifically, these final regulations provide that, solely for purposes of this exception, a newly issued intercompany obligation will include an obligation that is issued (or deemed issued) by a member other than the original debtor if such other member assumes the original debtor's obligations in certain excepted transactions (intercompany nonrecognition exchanges or

intercompany taxable assumption transactions), and the assumption results in a significant modification and deemed exchange under § 1.1001–3.

2. Exception for Intercompany Taxable Assumption Transactions

The 2007 Proposed Regulations provide an exception to the application of the deemed satisfaction-reissuance model for certain intercompany sales or dispositions of assets where intercompany obligations are assumed as part of the transaction. This exception was intended to apply only in the case of a taxable sale (or other taxable disposition) of assets. Commentators noted, however, that the 2007 Proposed Regulations may be read to apply to nonrecognition transactions as well as taxable transactions. The IRS and the Treasury Department agree with the commentators and have revised the regulation to reflect its intended scope. However, as discussed in this preamble, these final regulations also clarify that the exception for certain section 351 nonrecognition exchanges is available for transactions in which a debtor's obligation is assumed.

3. Intercompany Nonrecognition Exchange Exceptions

The 2007 Proposed Regulations provide an exception to the deemed satisfaction-reissuance model for intercompany exchanges to which section 332 or 361 apply if neither the creditor nor the debtor recognize an amount of income, gain, deduction, or loss in the transaction, or in intercompany exchanges to which section 351 applies if no such amount is recognized by the creditor.

a. Section 351 Exception

Commentators questioned whether the exception for section 351 exchanges is available only for transactions in which a creditor assigns an intercompany obligation or if it also is available for transactions in which a debtor's obligation under an intercompany obligation is assumed. The exception is intended to apply to both such transactions. Consistent with the exception for intercompany exchanges under section 332 and section 361, these final regulations revise the exception for intercompany exchanges under section 351 by providing that it will apply only if neither the creditor nor the debtor recognizes an amount.

In addition, because the IRS and the Treasury Department believe that the assignment by a creditor of an intercompany obligation in an intercompany section 351 exchange presents significant potential for distortion, these final regulations limit the availability of the exception for certain of these section 351 transactions. These transactions generally involve exchanges where the transferor or transferee member has a unique tax attribute or special status, where the transferee member issues preferred stock in the exchange, or where the stock of the transferee member (or the stock of a direct or indirect owner of the transferee member) is disposed of within a short period after the exchange.

b. Scope of Exception Under Section 332.

With respect to intercompany exchanges under section 332, commentators requested clarification as to the scope of the exception, particularly with respect to the requirement that no amount be recognized in the exchange. Accordingly, these final regulations revise the exception to provide that it applies to exchanges to which both section 332 and section 337(a) apply in which no amount is recognized by either the creditor or debtor member.

c. Gain or Loss With Respect to an Intercompany Obligation.

The exception to the deemed satisfaction-reissuance model for intercompany exchanges under sections 332, 351, and 361 generally is available if no amount of income, gain, deduction or loss is recognized. Commentators questioned whether this exception was available only where the amount recognized was with respect to the intercompany obligation. The requirement that no amount be recognized in the exchange applies to amounts recognized with respect to all assets. In exchanges where amounts are recognized, the fair market value of all assets (including the intercompany obligation) must be determined. In such cases, the IRS and the Treasury Department do not believe it is unduly burdensome to require a deemed satisfaction and reissuance. Accordingly, these final regulations retain the language of the 2007 Proposed Regulations.

4. Outbound Exception for Intercompany Obligations Newly-Issued in a Reorganization

The 2007 Proposed Regulations provide an exception to the deemed satisfaction-reissuance model for the outbound transfer of an intercompany obligation that is newly issued in an intragroup reorganization and pursuant to the plan of reorganization, is distributed to a nonmember shareholder or creditor in a transaction to which section 361(c) applies. Commentators generally supported this exception but also suggested that, under similar circumstances, an exception be added to apply to certain intercompany distributions of an intercompany obligation if the obligation is transferred outside of the group within a relatively short period of time.

The IRS and the Treasury Department are continuing to study the effects of the deemed satisfaction-reissuance model on such intercompany distributions in conjunction with a broader study regarding the interaction of section 361 and the intercompany transaction rules. Accordingly, these final regulations do not include the suggested exception. However, the IRS and the Treasury Department request further comments in this regard.

5. Exceptions to the Application of Section 108(e)(4)

The 2007 Proposed Regulations retain the exceptions in the Former Regulations for transactions involving an obligation that becomes (in the context of an inbound transaction) or became (in the context of an intragroup or outbound transaction), an intercompany obligation by reason of an event described in § 1.108–2(e). In general, these events are: (1) Acquisitions of indebtedness with a stated maturity date within one year of the acquisition date if the indebtedness is retired on or before that date (the ''short-term debt exception''); and (2) acquisitions of indebtedness by a dealer that acquires and disposes of the indebtedness in the ordinary course of its business of dealing in securities (the ''dealer exception'').

The short-term debt exception is premised upon the view that imposition of the deemed satisfaction-reissuance model is unwarranted because the indebtedness would be retired within the short term by its own terms (and the retirement would produce the same results as that of the deemed satisfaction and reissuance). With respect to the dealer exception, because the indebtedness' status as an intercompany obligation is likely transitory, the burden associated with the deemed satisfaction-reissuance model does not warrant its application.

One commentator questioned whether the short-term debt exception is appropriate because the intragroup retirement of the instrument may produce items that differ in character from those that would be obtained if the instrument were subject to the deemed satisfaction-reissuance model upon entering the group. For example, if a

depreciated obligation is deemed satisfied and reissued immediately after it enters the group, the attributes of the creditor's loss and the debtor's discharge of indebtedness income are determined on a separate entity basis. However, if the instrument is excepted from the deemed satisfaction-reissuance model when it enters the group, the subsequent retirement of the note may result, arguably, in a character match of the creditor's and debtor's items. In cases where the adjusted issue price and basis of the note differ in amount, the potential for differing results is amplified. Therefore, the IRS and the Treasury Department agree that the short term debt exceptions for both inbound and intragroup transactions should be eliminated in these final regulations. The dealer exception has been retained in these final regulations.

Consistent with the Former Regulations' treatment of inbound transactions, the 2007 Proposed Regulations treat the attributes of the debtor and creditor member's items from the deemed satisfaction on a separate entity basis. The IRS and the Treasury Department continue to believe that separate entity treatment is appropriate for such inbound transactions.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses, and, moreover, that any burden on taxpayers is minimal. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Frances Kelly, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Sections 1.1502–13 and 1.1502–28 also issued under 26 U.S.C. 1502. * * *

■ **Par. 2.** Section 1.1502–13 is amended by:

■ 1. Revising the heading and the entries for § 1.1502–13(g)(5) in paragraph (a)(6)(ii).

■ 2. Revising the first sentence of paragraph (e)(2)(i).

■ 3. Revising paragraph (g).

■ 4. Removing paragraph (j)(9) *Example (5)(c)*.

The revisions read as follows:

§ 1.1502–13 Intercompany transactions.

(a) * * *

(6) * * *

(ii) * * *

Obligations of members. (§ 1.1502–13(g)(7)(ii))

Example 1. Interest on intercompany obligation.

Example 2. Intercompany obligation becomes nonintercompany obligation.

Example 3. Loss or bad debt deduction with respect to intercompany obligation.

Example 4. Intercompany nonrecognition transactions.

Example 5. Assumption of intercompany obligation.

Example 6. Extinguishment of intercompany obligation.

Example 7. Exchange of intercompany obligations.

Example 8. Tax benefit rule.

Example 9. Issuance at off-market rate of interest.

Example 10. Nonintercompany obligation becomes intercompany obligation.

Example 11. Notional principal contracts.

* * * * *

(e) * * *

(2) * * * (i) * * * Except as provided in paragraph (g)(4)(v) of this section (deferral of items from an intercompany obligation), a member's addition to, or reduction of, a reserve for bad debts that is maintained under section 585 is taken into account on a separate entity basis. * * *

* * * * *

(g) *Obligations of members*—(1) *In general.* In addition to the general rules of this section, the rules of this paragraph (g) apply to intercompany obligations.

(2) *Definitions.* For purposes of this section, the following definitions apply—

(i) *Obligation of a member* is a debt or security of a member.

(A) *Debt of a member* is any obligation of the member constituting indebtedness under general principles of Federal income tax law (for example, under nonstatutory authorities, or under section 108, section 163, or § 1.1275–1(d)), but not an executory obligation to purchase or provide goods or services.

(B) *Security of a member* is any security of the member described in section 475(c)(2)(D) or (E), and any commodity of the member described in section 475(e)(2)(A), (B), or (C), but not if the security or commodity is a position with respect to the member's stock. See paragraphs (f)(4) and (f)(6) of this section for special rules applicable to positions with respect to a member's stock.

(ii) *Intercompany obligation* is an obligation between members, but only for the period during which both parties are members.

(iii) *Intercompany obligation subgroup* is comprised of two or more members that include the creditor and debtor on an intercompany obligation if the creditor and debtor bear the relationship described in section 1504(a)(1) to each other through an intercompany obligation subgroup parent.

(iv) *Intercompany obligation subgroup parent* is the corporation (including either the creditor or debtor) that bears the same relationship to the other members of the intercompany obligation subgroup as a common parent bears to the members of a consolidated group. Any reference to an intercompany obligation subgroup parent includes, as the context may require, a reference to a predecessor or successor. For this purpose, a predecessor is a transferor of assets to a transferee (the successor) in a transaction to which section 381(a) applies.

(v) *Tax benefit* is the benefit of, for Federal tax purposes, a net reduction in income or gain, or a net increase in loss, deduction, credit, or allowance. A tax benefit includes, but is not limited to, the use of a built-in item or items from an intercompany obligation to reduce gain or increase loss on the sale of member stock, or to create or absorb a tax attribute of a member or subgroup.

(vi) *Eighty-percent chain* is a chain of two or more corporations in which stock meeting the requirements of section 1504(a)(2) of each lower-tier member is held directly by a higher-tier member of such chain.

(3) *Deemed satisfaction and reissuance of intercompany obligations in triggering transactions*—(i) *Scope*—(A) *Triggering transactions.* For purposes of this paragraph (g)(3), a triggering transaction includes the following:

(*1*) *Assignment and extinguishment transactions.* Any intercompany transaction in which a member realizes an amount, directly or indirectly, from the assignment or extinguishment of all or part of its remaining rights or obligations under an intercompany obligation or any comparable transaction in which a member realizes any such amount, directly or indirectly, from an intercompany obligation (for example, a mark to fair market value of an obligation or a bad debt deduction). However, a reduction of the basis of an intercompany obligation pursuant to § 1.1502–36(d) (attribute reduction to prevent duplication of loss), or pursuant to sections 108 and 1017 and § 1.1502–28 (basis reductions upon the exclusion from gross income of discharge of indebtedness) or any other provision that adjusts the basis of an intercompany obligation as a substitute for income, gain, deduction, or loss, is not a comparable transaction.

(*2*) *Outbound transactions.* Any transaction in which an intercompany obligation becomes an obligation that is not an intercompany obligation.

(B) *Exceptions.* Except as provided in paragraph (g)(3)(i)(C) of this section, a transaction is not a triggering transaction as described in paragraph (g)(3)(i)(A) of this section if any of the exceptions in this paragraph (g)(3)(i)(B) apply. In making this determination, if a creditor or debtor realizes an amount in a transaction in which a creditor assigns all or part of its rights under an intercompany obligation to the debtor, or a debtor assigns all of or part of its obligations under an intercompany obligation to the creditor, the transaction will be treated as an extinguishment and will be excepted from the definition of ''triggering transaction'' only if either of the exceptions in paragraphs (g)(3)(i)(B)(*5*) or (*6*) of this section apply. The exceptions are as follows.

(*1*) *Intercompany section 361, 332, or 351 exchange.* The transaction is an intercompany exchange to which section 361(a), sections 332 and 337(a), or (except as provided in the following sentence) section 351 applies in which no amount of income, gain, deduction or loss is recognized by the creditor or debtor. The assignment of an intercompany obligation by a creditor member in an intercompany exchange to which section 351 applies is a triggering transaction, notwithstanding the preceding sentence, if a member of the group is described in, or engages in a transaction that is described in, any of the following paragraphs.

(*i*) The transferor or transferee member has a loss subject to a limitation (for example, a loss from a separate return limitation year that is subject to limitation under § 1.1502–21(c), or a dual consolidated loss that is subject to limitation under § 1.1503(d)–4), but only if the other member is not subject to a comparable limitation;

(*ii*) The transferor or transferee member has a special status within the meaning of § 1.1502–13(c)(5) (for example, a bank defined in section 581, or a life insurance company subject to tax under section 801) that the other member does not also possess;

(*iii*) A member of the group realizes discharge of indebtedness income that is excluded from gross income under section 108(a) within the same taxable year as that of the exchange, and the tax attributes attributable to either the transferor or the transferee member are reduced under sections 108, 1017, and § 1.1502–28 (except if the attribute reduction results solely from the application of § 1.1502–28(a)(4) (reduction of certain tax attributes attributable to other members));

(*iv*) The transferee member has a nonmember shareholder;

(*v*) The transferee member issues preferred stock to the transferor member in exchange for the assignment of the intercompany obligation; or

(*vi*) The stock of the transferee member (or a higher-tier member other than a higher-tier member of an 80-percent chain that includes the transferee) is disposed of within 12 months from the assignment of the intercompany obligation, unless at the time of the assignment, the transferor member, transferee member (or in the case of successive section 351 exchanges, each transferor and transferee member) and the debtor member are all in the same 80-percent chain; and all of the stock of the transferee (or in the case of successive section 351 exchanges, the lowest-tier transferee) held by members of the group is disposed of as part of the same plan or arrangement, either directly or indirectly, to persons that are not members of the group.

(*2*) *Intercompany assumption transaction.* All of the debtor's obligations under an intercompany obligation are assumed in connection with the debtor's sale or other disposition of property (other than solely money) in an intercompany transaction in which gain or loss is recognized under section 1001.

(*3*) *Exception to the application of section 108(e)(4).* The obligation became an intercompany obligation by reason of an event described in § 1.108–2(e)(2) (exception to the application of section 108(e)(4) in the case of acquisitions by securities dealers).

(*4*) *Reserve accounting.* The amount realized is from reserve accounting under section 585 (see paragraph (g)(4)(v) of this section for special rules).

(*5*) *Intercompany extinguishment transaction.* All or part of the rights and obligations under the intercompany obligation are extinguished in an intercompany transaction (other than an exchange or deemed exchange of an intercompany obligation for a newly issued intercompany obligation), the adjusted issue price of the obligation is equal to the creditor's basis in the obligation, and the debtor's corresponding item and the creditor's intercompany item (after taking into account the special rules of paragraph (g)(4)(i)(C) of this section) with respect to the obligation offset in amount.

(*6*) *Routine modification of intercompany obligation.* All of the rights and obligations under the intercompany obligation are extinguished in an intercompany transaction that is an exchange (or deemed exchange) for a newly issued intercompany obligation, and the issue price of the newly issued obligation equals both the adjusted issue price of the extinguished obligation and the creditor's basis in the extinguished obligation. Solely for purposes of the preceding sentence, a newly issued intercompany obligation includes an obligation that is issued (or deemed issued) by a member other than the original debtor if such other member assumes the original debtor's obligations under the original obligation in a transaction that is described in either paragraph (g)(3)(i)(B)(*1*) or (g)(3)(i)(B)(*2*) of this section and the assumption results in a significant modification of the original obligation under § 1.1001–3(e)(4) and a deemed exchange under § 1.1001–3(b).

(*7*) *Outbound distribution of newly issued intercompany obligation.* The intercompany obligation becomes an obligation that is not an intercompany obligation in a transaction in which a member that is a party to the reorganization exchanges property in pursuance of the plan of reorganization

for a newly issued intercompany obligation of another member that is a party to the reorganization and distributes such intercompany obligation to a nonmember shareholder or nonmember creditor in a transaction to which section 361(c) applies.

(*8*) *Outbound subgroup exception.* The intercompany obligation becomes an obligation that is not an intercompany obligation in a transaction in which the members of an intercompany obligation subgroup cease to be members of a consolidated group, neither the creditor nor the debtor recognize any income, gain, deduction, or loss with respect to the intercompany obligation, and such members constitute an intercompany obligation subgroup of another consolidated group immediately after the transaction.

(C) *Tax benefit rule.* If an assignment or extinguishment of an intercompany obligation in an intercompany transaction is otherwise excepted from the definition of triggering transaction under paragraph (g)(3)(i)(B)(*1*), (*2*), (*5*), or (*6*) of this section (and not also under paragraph (g)(3)(i)(B)(*3*) or (*4*) of this section), and the assignment or extinguishment is engaged in with a view to shift items of built-in gain, loss, income, or deduction from the obligation from one member to another member in order to secure a tax benefit (as defined in paragraph (g)(2)(v) of this section) that the group or its members would not otherwise enjoy in a consolidated or separate return year, then the assignment or extinguishment will be a triggering transaction to which paragraph (g)(3)(ii) of this section applies.

(ii) *Application of deemed satisfaction and reissuance.* This paragraph (g)(3)(ii) applies if a triggering transaction occurs.

(A) *General rule.* If the intercompany obligation is debt of a member, then (except as provided in the following sentence) the debt is treated for all Federal income tax purposes as having been satisfied by the debtor for cash in an amount equal to its fair market value, and then as having been reissued as a new obligation (with a new holding period but otherwise identical terms) for the same amount of cash, immediately before the triggering transaction. However, if the creditor realizes an amount with respect to the debt in the triggering transaction that differs from the debt's fair market value, and the triggering transaction is not an exchange (or deemed exchange) of debt of a member for newly issued debt of a member, then the debt is treated for all Federal income tax purposes as having been satisfied by the debtor for cash in an amount equal to such amount realized, and reissued as a new obligation (with a new holding period but otherwise identical terms) for the same amount of cash, immediately before the triggering transaction. If the triggering transaction is a mark to fair market value under section 475, then the intercompany obligation will be deemed satisfied and reissued for its fair market value (as determined under section 475 and applicable regulations) and section 475 will not otherwise apply with respect to that triggering transaction. If the intercompany obligation is a security of a member, similar principles apply (with appropriate adjustments) to treat the security as having been satisfied and reissued immediately before the triggering transaction.

(B) *Treatment as separate transaction.* The deemed satisfaction and deemed reissuance are treated as transactions separate and apart from the triggering transaction. The deemed satisfaction and reissuance of a member's debt will not cause the debt to be recharacterized as other than debt for Federal income tax purposes.

(4) *Special rules*—(i) *Timing and attributes.* For purposes of applying the matching rule and the acceleration rule to a transaction involving an intercompany obligation (other than a transaction to which paragraph (g)(5) of this section applies)—

(A) Paragraph (c)(6)(i) of this section (treatment of intercompany items if corresponding items are excluded or nondeductible) will not apply to exclude any amount of income or gain attributable to a reduction of the basis of the intercompany obligation pursuant to § 1.1502–36(d), or pursuant to sections 108 and 1017 and § 1.1502–28 or any other provision that adjusts the basis of an intercompany obligation as a substitute for income or gain;

(B) Paragraph (c)(6)(ii) of this section (limitation on treatment of intercompany income or gain as excluded from gross income) does not apply to prevent any intercompany income or gain from the intercompany obligation from being excluded from gross income;

(C) Any income, gain, deduction, or loss from the intercompany obligation is not subject to section 108(a), section 354, section 355(a)(1), section 1091, or, in the case of an extinguishment of an intercompany obligation in a transaction in which the creditor transfers the obligation to the debtor in exchange for stock in such debtor, section 351(a); and

(D) Section 108(e)(7) does not apply upon the extinguishment of an intercompany obligation.

(ii) *Newly issued obligation in intercompany exchange.* If an intercompany obligation is exchanged (or is deemed exchanged) for a newly issued intercompany obligation and the exchange (or deemed exchange) is not a routine modification of an intercompany obligation (as described in paragraph (g)(3)(i)(B)(*6*) of this section), then the newly issued obligation will be treated for all Federal income tax purposes as having an issue price equal to its fair market value.

(iii) *Off-market issuance.* If an intercompany obligation is issued at a rate of interest that is materially off-market (off-market obligation) with a view to shift items of built-in gain, loss, income, or deduction from the obligation from one member to another member in order to secure a tax benefit (as defined in paragraph (g)(2)(v) of this section), then the intercompany obligation will be treated, for all Federal income tax purposes, as originally issued for its fair market value, and any difference between the amount loaned and the fair market value of the obligation will be treated as transferred between the creditor and the debtor at the time the obligation is issued. For example, if S lends $100 to B in return for an off-market B note valued at $130, and the note is issued with a view to shift items from the note to secure a tax benefit, then the B note will be treated as issued for $130. The $30 difference will be treated as a distribution or capital contribution between S and B (as appropriate) at the time of issuance, and this amount will be reflected in future payments on the note as bond issuance premium. An adjustment to an off-market obligation under this paragraph (g)(4)(iii) will be made without regard to the application of, and in lieu of any adjustment under, section 467 (certain payments for the use of property or services), 482 (allocations among commonly controlled taxpayers), 483 (interest on certain deferred payments), 1274 (determination of issue price for certain debt instruments issued for property), or 7872 (treatment of loans with below-market interest rates).

(iv) *Deferral of loss or deduction with respect to nonmember indebtedness acquired in certain debt exchanges.* If a creditor transfers an intercompany obligation to a nonmember (former intercompany obligation) in exchange for newly issued debt of a nonmember (nonmember debt), and the issue price of the nonmember debt is not determined by reference to its fair market value (for example, the issue price is determined under section 1273(b)(4) or 1274(a) or any other provision of applicable law), then any

loss of the creditor otherwise allowable on the subsequent disposition of the nonmember debt, or any comparable tax benefit that would otherwise be available in any other transaction that directly or indirectly results from the disposition of the nonmember debt, is deferred until the date the debtor retires the former intercompany obligation.

(v) *Bad debt reserve.* A member's deduction under section 585 for an addition to its reserve for bad debts with respect to an intercompany obligation is not taken into account, and is not treated as realized for purposes of paragraph (g)(3)(i)(A)(*1*) of this section, until the intercompany obligation is extinguished or becomes an obligation that is not an intercompany obligation.

(5) *Deemed satisfaction and reissuance of obligations becoming intercompany obligations*—(i) *Application of deemed satisfaction and reissuance*—(A) *In general.* This paragraph (g)(5) applies if an obligation that is not an intercompany obligation becomes an intercompany obligation.

(B) *Exceptions.* This paragraph (g)(5) does not apply to an intercompany obligation if either of the following exceptions apply.

(*1*) *Exception to the application of section 108(e)(4).* The obligation becomes an intercompany obligation by reason of an event described in § 1.108–2(e)(2) (exception to the application of section 108(e)(4) in the case of acquisitions by securities dealers); or

(*2*) *Inbound subgroup exception.* The obligation becomes an intercompany obligation in a transaction in which the members of an intercompany obligation subgroup cease to be members of a consolidated group, neither the creditor nor the debtor recognize any income, gain, deduction, or loss with respect to the intercompany obligation, and such members constitute an intercompany obligation subgroup of another consolidated group immediately after the transaction.

(ii) *Deemed satisfaction and reissuance*—(A) *General rule.* If the intercompany obligation is debt of a member, then the debt is treated for all Federal income tax purposes, immediately after it becomes an intercompany obligation, as having been satisfied by the debtor for cash in an amount determined under the principles of § 1.108–2(f), and then as having been reissued as a new obligation (with a new holding period but otherwise identical terms) for the same amount of cash. If the intercompany obligation is a security of a member, similar principles apply (with appropriate adjustments) to treat the security, immediately after it becomes an intercompany obligation, as satisfied and reissued by the debtor for cash in an amount equal to its fair market value.

(B) *Treatment as separate transaction.* The deemed satisfaction and deemed reissuance are treated as transactions separate and apart from the transaction in which the debt becomes an intercompany obligation, and the tax consequences of the transaction in which the debt becomes an intercompany obligation must be determined before the deemed satisfaction and reissuance occurs. (For example, if the debt becomes an intercompany obligation in a transaction to which section 351 applies, any limitation imposed by section 362(e) on the basis of the intercompany obligation in the hands of the transferee member is determined before the deemed satisfaction and reissuance.) The deemed satisfaction and reissuance of a member's debt will not cause the debt to be recharacterized as other than debt for Federal income tax purposes.

(6) *Special rules*—(i) *Timing and attributes.* If paragraph (g)(5) of this section applies to an intercompany obligation—

(A) Section 108(e)(4) does not apply;

(B) The attributes of all items taken into account from the satisfaction of the intercompany obligation are determined on a separate entity basis, rather than by treating S and B as divisions of a single corporation; and

(C) Any intercompany gain or loss realized by the creditor is not subject to section 354 or section 1091.

(ii) *Waiver of loss carryovers from separate return limitation years.* Solely for purposes of § 1.1502–32(b)(4) and the effect of any election under that provision, any loss taken into account under paragraph (g)(5) of this section by a corporation that becomes a member as a result of the transaction in which the obligation becomes an intercompany obligation is treated as a loss carryover from a separate return limitation year.

(iii) *Deduction of repurchase premium in certain debt exchanges.* If an obligation to which paragraph (g)(5) of this section applies is acquired in exchange for the issuance of an obligation to a nonmember and the issue price of this newly issued obligation is not determined by reference to its fair market value (for example, the issue price is determined under section 1273(b)(4) or 1274(a) or any other provision of applicable law), then, under the principles of § 1.163–7(c), any repurchase premium from the deemed satisfaction of the intercompany obligation under paragraph (g)(5)(ii) of this section will be amortized by the debtor over the term of the obligation issued to the nonmember in the same manner as if it were original issue discount and the obligation to the nonmember had been issued directly by the debtor.

(7) *Examples*—(i) *In general.* For purposes of the examples in this paragraph (g), unless otherwise stated, interest is qualified stated interest under § 1.1273–1(c), and the intercompany obligations are capital assets and are not subject to section 475.

(ii) The application of this section to obligations of members is illustrated by the following examples:

Example 1. Interest on intercompany obligation. (i) *Facts.* On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 5. B fully performs its obligations. Under their separate entity methods of accounting, B accrues a $10 interest deduction annually under section 163, and S accrues $10 of interest income annually under section 61(a)(4) and § 1.446–2.

(ii) *Matching rule.* Under paragraph (b)(1) of this section, the accrual of interest on B's note is an intercompany transaction. Under the matching rule, S takes its $10 of income into account in each of years 1 through 5 to reflect the $10 difference between B's $10 of interest expense taken into account and the $0 recomputed expense. S's income and B's deduction are ordinary items. (Because S's intercompany item and B's corresponding item would both be ordinary on a separate entity basis, the attributes are not redetermined under paragraph (c)(1)(i) of this section.)

(iii) *Original issue discount.* The facts are the same as in paragraph (i) of this *Example 1,* except that B borrows $90 (rather than $100) from S in return for B's note providing for $10 of interest annually and repayment of $100 at the end of year 5. The principles described in paragraph (ii) of this *Example 1* for stated interest also apply to the $10 of original issue discount. Thus, as B takes into account its corresponding expense under section 163(e), S takes into account its intercompany income under section 1272. S's income and B's deduction are ordinary items.

(iv) *Tax-exempt income.* The facts are the same as in paragraph (i) of this *Example 1,* except that B's borrowing from S is allocable under section 265 to B's purchase of state and local bonds to which section 103 applies. The timing of S's income is the same as in paragraph (ii) of this *Example 1.* Under paragraph (c)(4)(i) of this section, the attributes of B's corresponding item of disallowed interest expense control the attributes of S's offsetting intercompany interest income. Paragraph (c)(6) of this section does not prevent the redetermination of S's intercompany item as excluded from gross income because section 265(a)(2) permanently and explicitly disallows B's corresponding deduction and because, under paragraph (g)(4)(i)(B) of this section, paragraph (c)(6)(ii) of this section does not

apply to prevent any intercompany income from the B note from being excluded from gross income. Accordingly, S's intercompany income is treated as excluded from gross income.

Example 2. Intercompany obligation becomes nonintercompany obligation. (i) *Facts.* On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 5. As of January 1 of year 3, B has paid the interest accruing under the note and S sells B's note to X for $70, reflecting an increase in prevailing market interest rates. B is never insolvent within the meaning of section 108(d)(3).

(ii) *Deemed satisfaction and reissuance.* Because the B note becomes an obligation that is not an intercompany obligation, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(*2*) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value of $70 immediately before S's sale to X. As a result of the deemed satisfaction of the note for less than its adjusted issue price, B takes into account $30 of discharge of indebtedness income under § 1.61–12. On a separate entity basis, S's $30 loss would be a capital loss under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's $30 of discharge of indebtedness income control the attributes of S's loss. Thus, S's loss is treated as ordinary loss. B is also treated as reissuing, immediately after the satisfaction, a new note to S with a $70 issue price, a $100 stated redemption price at maturity, and a $70 basis in the hands of S. S is then treated as selling the new note to X for the $70 received by S in the actual transaction. Because S has a basis of $70 in the new note, S recognizes no gain or loss from the sale to X. After the sale, the new note held by X is not an intercompany obligation, it has a $70 issue price, a $100 stated redemption price at maturity, and a $70 basis. The $30 of original issue discount will be taken into account by B and X under sections 163(e) and 1272.

(iii) *Creditor deconsolidation.* The facts are the same as in paragraph (i) of this *Example 2*, except that P sells S's stock to X (rather than S selling B's note to X). Because the B note becomes an obligation that is not an intercompany obligation, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(*2*) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its $70 fair market value immediately before S becomes a nonmember. The treatment of S's $30 of loss and B's $30 of discharge of indebtedness income is the same as in paragraph (ii) of this *Example 2*. The new note held by S upon deconsolidation is not an intercompany obligation, it has a $70 issue price, a $100 stated redemption price at maturity, and a $70 basis. The $30 of original issue discount will be taken into account by B and S under sections 163(e) and 1272.

(iv) *Debtor deconsolidation.* The facts are the same as in paragraph (i) of this *Example 2,* except that P sells B's stock to X (rather than S selling B's note to X). The results to S and B are the same as in paragraph (iii) of this *Example 2*.

(v) *Subgroup exception.* The facts are the same as in paragraph (i) of this *Example 2,* except that P owns all of the stock of S, S owns all of the stock of B, and P sells all of the S stock to X, the parent of another consolidated group. Because B and S, members of an intercompany obligation subgroup, cease to be members of the P group in a transaction that does not cause either member to recognize an item with respect to the B note, and such members constitute an intercompany obligation subgroup in the X group, P's sale of S stock is not a triggering transaction under paragraph (g)(3)(i)(B)(*8*) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section. After the sale, the note held by S has a $100 issue price, a $100 stated redemption price at maturity, and a $100 basis. The results are the same if the S stock is sold to an individual and the S–B affiliated group elects to file a consolidated return for the period beginning on the day after S and B cease to be members of the P group.

(vi) *Section 338 election.* The facts are the same as paragraph (i) of this *Example 2,* except that P sells S's stock to X and a section 338 election is made with respect to the stock sale. Under section 338, S is treated as selling all of its assets to new S, including the B note, at the close of the acquisition date. The aggregate deemed sales price (within the meaning of § 1.338–4) allocated to the B note is $70. Because the B note becomes an obligation that is not an intercompany obligation, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(*2*) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued immediately before S's deemed sale to new S for $70, the amount realized with respect to the note (the aggregate deemed sales price allocated to the note under § 1.338–6). The results to S and B are the same as in paragraph (ii) of this *Example 2*.

(vii) *Appreciated note.* The facts are the same as in paragraph (i) of this *Example 2,* except that S sells B's note to X for $130 (rather than $70), reflecting a decline in prevailing market interest rates. Because the B note becomes an obligation that is not an intercompany obligation, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(*2*) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value of $130 immediately before S's sale to X. As a result of the deemed satisfaction of the note for more than its adjusted issue price, B takes into account $30 of repurchase premium under § 1.163–7(c). On a separate entity basis, S's $30 gain would be a capital gain under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's premium deduction control the attributes of S's gain. Accordingly, S's gain is treated as ordinary income. B is also treated as reissuing, immediately after the satisfaction, a new note to S with a $130 issue price, $100 stated redemption price at maturity, and $130 basis in the hands of S. S is then treated as selling the new note to X for the $130 received by S in the actual transaction. Because S has a basis of $130 in the new note, S recognizes no gain or loss from the sale to X. After the sale, the new note held by X is not an intercompany obligation, it has a $130 issue price, a $100 stated redemption price at maturity, and a $130 basis. The treatment of B's $30 of bond issuance premium under the new note is determined under § 1.163–13.

(viii) *Deferral of loss or deduction with respect to nonmember indebtedness acquired in debt exchange.* The facts are the same as in paragraph (i) of this *Example 2*, except that S sells B's note to X for a non-publicly traded X note with an issue price and face amount of $100 and a fair market value of $70, and that, subsequently, S sells the X note for $70. Because the B note becomes an obligation that is not an intercompany obligation, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(*2*) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued immediately before S's sale to X for $100, the amount realized with respect to the note (determined under section 1274). As a result of the deemed satisfaction, neither S nor B take into account any items of income, gain, deduction, or loss. S is then treated as selling the new B note to X for the X note received by S in the actual transaction. Because S has a basis of $100 in the new note, S recognizes no gain or loss from the sale to X. After the sale, the new B note held by X is not an intercompany obligation, it has a $100 issue price, a $100 stated redemption price at maturity, and a $100 basis. S also holds an X note with a basis of $100 but a fair market value of $70. When S disposes of the X note, S's loss on the disposition is deferred under paragraph (g)(4)(iv) of this section, until B retires its note (the former intercompany obligation in the hands of X).

Example 3. Loss or bad debt deduction with respect to intercompany obligation. (i) *Facts.* On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 5. On January 1 of year 3, the fair market value of the B note has declined to $60 and S sells the B note to P for property with a fair market value of $60. B is never insolvent within the meaning of section 108(d)(3). The B note is not a security within the meaning of section 165(g)(2).

(ii) *Deemed satisfaction and reissuance.* Because S realizes an amount of loss from the assignment of the B note, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(*1*) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value of $60 immediately before S's

sale to P. As a result of the deemed satisfaction of the note for less than its adjusted issue price ($100), B takes into account $40 of discharge of indebtedness income under § 1.61–12. On a separate entity basis, S's $40 loss would be a capital loss under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's $40 of discharge of indebtedness income control the attributes of S's loss. Thus, S's loss is treated as ordinary loss. B is also treated as reissuing, immediately after the satisfaction, a new note to S with a $60 issue price, $100 stated redemption price at maturity, and $60 basis in the hands of S. S is then treated as selling the new note to P for the $60 of property received by S in the actual transaction. Because S has a basis of $60 in the new note, S recognizes no gain or loss from the sale to P. After the sale, the note is an intercompany obligation, it has a $60 issue price and a $100 stated redemption price at maturity, and the $40 of original issue discount will be taken into account by B and P under sections 163(e) and 1272.

(iii) *Partial bad debt deduction.* The facts are the same as in paragraph (i) of this *Example 3,* except that S claims a $40 partial bad debt deduction under section 166(a)(2) (rather than selling the note to P). Because S realizes a deduction from a transaction comparable to an assignment of the B note, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(*1*) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value of $60 immediately before section 166(a)(2) applies. The treatment of S's $40 loss and B's $40 of discharge of indebtedness income are the same as in paragraph (ii) of this *Example 3.* After the reissuance, S has a basis of $60 in the new note. Accordingly, the application of section 166(a)(2) does not result in any additional deduction for S. The $40 of original issue discount on the new note will be taken into account by B and S under sections 163(e) and 1272.

(iv) *Insolvent debtor.* The facts are the same as in paragraph (i) of this *Example 3,* except that B is insolvent within the meaning of section 108(d)(3) at the time that S sells the note to P. As explained in paragraph (ii) of this *Example 3,* the transaction is a triggering transaction and the B note is treated as satisfied and reissued for its fair market value of $60 immediately before S's sale to P. On a separate entity basis, S's $40 loss would be capital, B's $40 income would be excluded from gross income under section 108(a), and B would reduce attributes under section 108(b) or section 1017 (see also § 1.1502–28). However, under paragraph (g)(4)(i)(C) of this section, section 108(a) does not apply to characterize B's income as excluded from gross income. Accordingly, the attributes of S's loss and B's income are redetermined in the same manner as in paragraph (ii) of this *Example 3.*

Example 4. Intercompany nonrecognition transactions. (i) *Facts.* On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 5. As of January 1 of year 3, B has fully performed its obligations, but the note's fair market value is $130, reflecting a decline in prevailing market interest rates. On January 1 of year 3, S transfers the note and other assets to a newly formed corporation, Newco, for all of Newco's common stock in an exchange to which section 351 applies.

(ii) *No deemed satisfaction and reissuance.* Because the assignment of the B note is an exchange to which section 351 applies and S recognizes no gain or loss, the transaction is not a triggering transaction under paragraph (g)(3)(i)(B)(*1*) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section.

(iii) *Receipt of other property.* The facts are the same as in paragraph (i) of this *Example 4,* except that the other assets transferred to Newco have a basis of $100 and a fair market value of $260, and S receives, in addition to Newco common stock, $15 of cash. Because S would recognize $15 of gain under section 351(b), the assignment of the B note is a triggering transaction under paragraph (g)(3)(i)(A)(*1*) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value of $130 immediately before the transfer to Newco. As a result of the deemed satisfaction of the note for more than its adjusted issue price, B takes into account $30 of repurchase premium under § 1.163–7(c). On a separate entity basis, S's $30 gain would be a capital gain under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's premium deduction control the attributes of S's gain. Accordingly, S's gain is treated as ordinary income. B is also treated as reissuing, immediately after the satisfaction, a new note to S with a $130 issue price, $100 stated redemption price at maturity, and $130 basis in the hands of S. S is then treated as transferring the new note to Newco for the Newco stock and cash received by S in the actual transaction. Because S has a basis of $130 in the new B note, S recognizes no gain or loss with respect to the transfer of the note in the section 351 exchange, and S recognizes $10 of gain with respect to the transfer of the other assets under section 351(b). After the transfer, the note has a $130 issue price and a $100 stated redemption price at maturity. The treatment of B's $30 of bond issuance premium under the new note is determined under § 1.163–13.

(iv) The facts are the same as in paragraph (i) of this *Example 4,* except that T is a member with a loss from a separate return limitation year that is subject to limitation under § 1.1502–21(c) (a SRLY loss), and on January 1 of year 3, S transfers the assets and the B note to T in an exchange to which section 351 applies. Because the transferee, T, has a loss that is subject to a limitation, the assignment of the B note is a triggering transaction under paragraph (g)(3)(i)(A)(*1*) of this section (the exception in paragraph (g)(3)(i)(B)(*1*) of this section does not apply). Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value, immediately before S's transfer to T. As a result of the deemed satisfaction of the note for more than its adjusted issue price, B takes into account $30 of repurchase premium under § 1.163–7(c). On a separate entity basis, S's $30 gain would be a capital gain under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's premium deduction control the attributes of S's gain. Accordingly, S's gain is treated as ordinary income. B is also treated as reissuing, immediately after the satisfaction, a new note to S with a $130 issue price, $100 stated redemption price at maturity, and $130 basis in the hands of S. The treatment of B's $30 of bond issuance premium under the new note is determined under § 1.163–13. S is then treated as transferring the new note to T as part of the section 351 exchange. Because T will have a fair market value basis in the reissued B note immediately after the exchange, T's intercompany item from the subsequent retirement of the B note will not reflect any of S's built-in gain (and the amount of T's SRLY loss that may be absorbed by such item will be limited to any appreciation in the B note accruing after the exchange).

(v) *Intercompany obligation transferred in section 332 transaction.* The facts are the same as in paragraph (i) of this *Example 4,* except that S transfers the B note to P in complete liquidation under section 332. Because the transaction is an exchange to which section 332 and section 337(a) applies, and neither S nor B recognize gain or loss, the transaction is not a triggering transaction under paragraph (g)(3)(i)(B)(*1*) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section.

Example 5. Assumption of intercompany obligation. (i) *Facts.* On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 5. The note is fully recourse and is incurred for use in Business Z. As of January 1 of year 3, B has fully performed its obligations, but the note's fair market value is $110 reflecting a decline in prevailing market interest rates. Business Z has a fair market value of $95. On January 1 of year 3, B transfers all of the assets of Business Z and $15 of cash (substantially all of B's assets) to member T in exchange for the assumption by T of all of B's obligations under the note in a transaction in which gain or loss is recognized under section 1001. The terms and conditions of the note are not modified in connection with the sales transaction, the transaction does not result in a change in payment expectations, and no amount of income, gain, loss, or deduction is recognized by S, B, or T with respect to the note.

(ii) *No deemed satisfaction and reissuance.* Because all of B's obligations under the B note are assumed by T in connection with the sale of the Business Z assets, the assignment of B's obligations under the note is not a triggering transaction under paragraph (g)(3)(i)(B)(*2*) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section.

Example 6. Extinguishment of intercompany obligation. (i) *Facts.* On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 20. The note is a security within the meaning of section 351(d)(2). As of January 1 of year 3, B has fully performed its obligations, but the fair market value of the B note is $130, reflecting a decline in prevailing market interest rates, and S transfers the note to B in exchange for $130 of B stock in a transaction to which both section 351 and section 354 applies.

(ii) *No deemed satisfaction and reissuance.* As a result of the satisfaction of the note for more than its adjusted issue price, B takes into account $30 of repurchase premium under § 1.163–7(c). Although the transfer of the B note is a transaction to which both section 351 and section 354 applies, under paragraph (g)(4)(i)(C) of this section, any gain or loss from the intercompany obligation is not subject to either section 351(a) or section 354, and therefore, S has a $30 gain under section 1001. Because the note is extinguished in a transaction in which the adjusted issue price of the note is equal to the creditor's basis in the note, and the debtor's and creditor's items offset in amount, the transaction is not a triggering transaction under paragraph (g)(3)(i)(B)(*5*) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section. On a separate entity basis, S's $30 gain would be a capital gain under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's premium deduction control the attributes of S's gain. Accordingly, S's gain is treated as ordinary income. Under paragraph (g)(4)(i)(D) of this section, section 108(e)(7) does not apply upon the extinguishment of the B note, and therefore, the B stock received by S in the exchange will not be treated as section 1245 property.

Example 7. Exchange of intercompany obligations. (i) *Facts.* On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 20. As of January 1 of year 3, B has fully performed its obligations and, pursuant to a recapitalization to which section 368(a)(1)(E) applies, B issues a new note to S in exchange for the original B note. The new B note has an issue price, stated redemption price at maturity, and stated principal amount of $100, but contains terms that differ sufficiently from the terms of the original B note to cause a realization event under § 1.1001–3. The original B note and the new B note are both securities (within the meaning of section 354(a)(1)).

(ii) *No deemed satisfaction and reissuance.* Because the original B note is extinguished in exchange for a newly issued B note and the issue price of the new B note is equal to both the adjusted issue price of the original B note and S's basis in the original B note, the transaction is not a triggering transaction under paragraph (g)(3)(i)(B)(*6*) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section. B has neither income from discharge of indebtedness under section 108(e)(10) nor a deduction for repurchase premium under § 1.163–7(c). Although the exchange of the original B note for the new B note is a transaction to which section 354 applies, under paragraph (g)(4)(i)(C) of this section, any gain or loss from the intercompany obligation is not subject to section 354. Under section 1001, S has no gain or loss from the exchange of notes.

Example 8. Tax benefit rule. (i) *Facts.* On January 1 of year 1, B borrows $100 from S in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 5. As of January 1 of year 3, B has fully performed its obligations, but the note's fair market value has depreciated, reflecting an increase in prevailing market interest rates. On that date, S transfers the B note to member T as part of an exchange for T common stock which is intended to qualify for nonrecognition treatment under section 351 but with a view to sell the T stock at a reduced gain. On February 1 of year 4, all of the stock of T is sold at a reduced gain.

(ii) *Deemed satisfaction and reissuance.* Because the assignment of the B note does not occur within 12 months of the sale of T stock, paragraph (g)(3)(i)(B)(*1*)(*vi*) of this section does not apply to treat the assignment as a triggering transaction. However, because the assignment of the B note was engaged in with a view to shift built-in loss from the obligation in order to secure a tax benefit that the group or its members would not otherwise enjoy, under paragraph (g)(3)(i)(C) of this section, the assignment of the B note is a triggering transaction to which paragraph (g)(3)(ii) of this section applies. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value, immediately before S's transfer to T. As a result of the deemed satisfaction of the note for less than its adjusted issue price, B takes into account discharge of indebtedness income and S has a corresponding loss which is treated as ordinary loss. B is also treated as reissuing, immediately after the deemed satisfaction, a new note to S with an issue price and basis equal to its fair market value. S is then treated as transferring the new note to T as part of the section 351 exchange. Because S's basis in the T stock received with respect to the transferred B note is equal to its fair market value, S's gain with respect to the T stock will not reflect any of the built-in loss attributable to the B note. (This example does not address common law doctrines or other authorities that might apply to recharacterize the transaction or to otherwise affect the tax treatment of the transaction.)

Example 9. Issuance at off-market rate of interest. (i) *Facts.* T is a member with a SRLY loss. T's sole shareholder, P, borrows an amount of cash from T in return for a P note that provides for a materially above market rate of interest. The P note is issued with a view to generate additional interest income to T over the term of the note to facilitate the absorption of T's SRLY loss.

(ii) *With a view.* Because the P note is issued with a view to shift interest income from the off-market obligation in order to secure a tax benefit that the group or its members would not otherwise enjoy, under paragraph (g)(4)(iii) of this section, the intercompany obligation is treated, for all Federal income tax purposes, as originally issued for its fair market value so T is treated as purchasing the note at a premium. The difference between the amount loaned and the fair market value of the obligation is treated as transferred from P to T as a capital contribution at the time the note is issued. Throughout the term of the note, T takes into account interest income and bond premium and P takes into account interest deduction and bond issuance premium under generally applicable Internal Revenue Code sections. The adjustment under paragraph (g)(4)(iii) of this section is made without regard to the application of, and in lieu of any adjustment under, section 482 or 1274.

Example 10. Nonintercompany obligation becomes intercompany obligation. (i) *Facts.* On January 1 of year 1, B borrows $100 from X in return for B's note providing for $10 of interest annually at the end of each year, and repayment of $100 at the end of year 5. As of January 1 of year 3, B has fully performed its obligations, but the note's fair market value is $70, reflecting an increase in prevailing market interest rates. On January 1 of year 3, P buys all of X's stock. B is solvent within the meaning of section 108(d)(3).

(ii) *Deemed satisfaction and reissuance.* Under paragraph (g)(5)(ii) of this section, B's note is treated as satisfied for $70 (determined under the principles of § 1.108–2(f)(2)) immediately after it becomes an intercompany obligation. Both X's $30 capital loss (under section 1271(a)(1)) and B's $30 of discharge of indebtedness income (under § 1.61–12) are taken into account in determining consolidated taxable income for year 3. Under paragraph (g)(6)(i)(B) of this section, the attributes of items resulting from the satisfaction are determined on a separate entity basis. But see section 382 and § 1.1502–15 (as appropriate). B is also treated as reissuing a new note to X. The new note is an intercompany obligation, it has a $70 issue price and $100 stated redemption price at maturity, and the $30 of original issue discount will be taken into account by B and X in the same manner as provided in paragraph (iii) of *Example 1* of this paragraph (g)(7).

(iii) *Amortization of repurchase premium.* The facts are the same as in paragraph (i) of this *Example 10,* except that on January 1 of year 3, the B note has a fair market value of $130 and rather than P purchasing the X stock, P purchases the B note from X by issuing its own note. The P note has an issue price, stated redemption price at maturity,

stated principal amount, and fair market value of $130. Under paragraph (g)(5)(ii) of this section, B's note is treated as satisfied for $130 (determined under the principles of § 1.108–2(f)(1)) immediately after it becomes an intercompany obligation. As a result of the deemed satisfaction of the note, P has no gain or loss and B has $30 of repurchase premium. Under paragraph (g)(6)(iii) of this section, B's $30 of repurchase premium from the deemed satisfaction is amortized by B over the term of the newly issued P note in the same manner as if it were original issue discount and the newly issued P note had been issued directly by B. B is also treated as reissuing a new note to P. The new note is an intercompany obligation, it has a $130 issue price and $100 stated redemption price at maturity, and the treatment of B's $30 of bond issuance premium under the new B note is determined under § 1.163–13.

(iv) *Election to file consolidated returns.* Assume instead that B borrows $100 from S during year 1, but the P group does not file consolidated returns until year 3. Under paragraph (g)(5)(ii) of this section, B's note is treated as satisfied and reissued as a new note immediately after the note becomes an intercompany obligation. The satisfaction and reissuance are deemed to occur on January 1 of year 3, for the fair market value of the obligation (determined under the principles of § 1.108–2(f)(2)) at that time.

Example 11. Notional principal contracts. (i) *Facts.* On April 1 of year 1, M1 enters into a contract with counterparty M2 under which, for a term of five years, M1 is obligated to make a payment to M2 each April 1, beginning in year 2, in an amount equal to the London Interbank Offered Rate (LIBOR), as determined by reference to LIBOR on the day each payment is due, multiplied by a $1,000 notional principal amount. M2 is obligated to make a payment to M1 each April 1, beginning in year 2, in an amount equal to 8 percent multiplied by the same notional principal amount. LIBOR is 7.80 percent on April 1 of year 2, and therefore, M2 owes $2 to M1.

(ii) *Matching rule.* Under § 1.446–3(d), the net income (or net deduction) from a notional principal contract for a taxable year is included in (or deducted from) gross income. Under § 1.446–3(e), the ratable daily portion of M2's obligation to M1 as of December 31 of year 1 is $1.50 ($2 multiplied by 275/365). Under the matching rule, M1's net income for year 1 of $1.50 is taken into account to reflect the difference between M2's net deduction of $1.50 taken into account and the $0 recomputed net deduction. Similarly, the $.50 balance of the $2 of net periodic payments made on April 1 of year 2 is taken into account for year 2 in M1's and M2's net income and net deduction from the contract. In addition, the attributes of M1's intercompany income and M2's corresponding deduction are redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of M2's corresponding deduction control the attributes of M1's intercompany income. (Although M1 is the selling member with respect to the payment on April 1 of year 2, it might be the buying member in a subsequent period if it owes the net payment.)

(iii) *Dealer.* The facts are the same as in paragraph (i) of this *Example 11,* except that M2 is a dealer in securities, and the contract with M1 is not inventory in the hands of M2. Under section 475, M2 must mark its securities to fair market value at year-end. Assume that under section 475, M2's loss from marking to fair market value the contract with M1 is $10. Because M2 realizes an amount of loss from the mark to fair market value of the contract, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(*1*) of this section. Under paragraph (g)(3)(ii) of this section, M2 is treated as making a $10 payment to M1 to terminate the contract immediately before a new contract is treated as reissued with an up-front payment by M1 to M2 of $10. M1's $10 of income from the termination payment is taken into account under the matching rule to reflect M2's deduction under § 1.446–3(h). The attributes of M1's intercompany income and M2's corresponding deduction are redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of M2's corresponding deduction control the attributes of M1's intercompany income. Accordingly, M1's income is treated as ordinary income. Under § 1.446–3(f), the deemed $10 up-front payment by M1 to M2 in connection with the issuance of a new contract is taken into account over the term of the new contract in a manner reflecting the economic substance of the contract (for example, allocating the payment in accordance with the forward rates of a series of cash-settled forward contracts that reflect the specified index and the $1,000 notional principal amount). (The timing of taking items into account is the same if M1, rather than M2, is the dealer subject to the mark-to-market requirement of section 475 at year-end. However in this case, because the attributes of the corresponding deduction control the attributes of the intercompany income, M1's income from the deemed termination payment from M2 might be ordinary or capital). Under paragraph (g)(3)(ii)(A) of this section, section 475 does not apply to mark the notional principal contract to fair market value after its deemed satisfaction and reissuance.

(8) *Effective/applicability date.* The rules of this paragraph (g) apply to transactions involving intercompany obligations occurring in consolidated return years beginning on or after December 24, 2008.

* * * * *

■ **Par. 3.** Section 1.1502–28 is amended by:

■ 1. Revising paragraph (b)(5)(i).

■ 2. Revising the last sentence of paragraph (b)(5)(ii).

■ 3. Adding a sentence to the end of paragraph (d).

The revisions and addition reads as follows:

§ 1.1502–28 Consolidated section 108.

* * * * *

(b) * * *

(5) *Reduction of basis of intercompany obligations and former intercompany obligations*—(i) *Intercompany obligations that cease to be intercompany obligations.* If excluded COD income is realized in a consolidated return year in which an intercompany obligation becomes an obligation that is not an intercompany obligation because the debtor or creditor becomes a nonmember, or because the assets of the debtor or the creditor are acquired by a nonmember in a transaction to which section 381 applies, then the basis of such intercompany obligation (or new obligation if the intercompany obligation is deemed reissued under § 1.1502–13(g)(3)) is available for reduction in respect of such excluded COD income pursuant to sections 108 and 1017 and this section.

(ii) * * * See § 1.1502–13(g)(3)(i)(A)(*1*) and (g)(4)(i)(A).

* * * * *

(d) * * * Paragraph (b)(5)(i) of this section and the last sentence of paragraph (b)(5)(ii) of this section applies to transactions occurring in consolidated return years beginning on or after December 24, 2008.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: December 18, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–30718 Filed 12–24–08; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9438]

RIN 1545–BI50

Guidance Regarding Foreign Base Company Sales Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that provide guidance relating to foreign base company sales income in cases in which personal property sold by a controlled foreign corporation is manufactured,

produced, or constructed pursuant to a contract manufacturing arrangement or by one or more branches of the controlled foreign corporation. These regulations modify the foreign base company sales income regulations to address current business structures and practices, particularly the growing importance of contract manufacturing and other manufacturing arrangements. These regulations, in general, will affect controlled foreign corporations and their United States shareholders. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date.* These regulations are effective July 1, 2009.

Applicability Date. For dates of applicability, see § 1.954–3(c) and § 1.954–3T(e). The final regulations shall apply to taxable years of controlled foreign corporations beginning after June 30, 2009, and for taxable years of United States shareholders in which or with which such taxable years of the controlled foreign corporations end. The temporary regulations shall apply to taxable years of controlled foreign corporations beginning after June 30, 2009, and for taxable years of United States shareholders in which or with which such taxable years of the controlled foreign corporations end.

FOR FURTHER INFORMATION CONTACT: Ethan Atticks, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On February 28, 2008, the IRS and the Treasury Department published in the **Federal Register** proposed regulations (REG–124590–07, 2008–16 IRB 801, 73 FR 10716, as corrected at 73 FR 20201), which provided proposed amendments to § 1.954–3, addressing the treatment of contract manufacturing arrangements under the foreign base company sales income (FBCSI) rules. Written comments were received in response to the notice of proposed rulemaking, and a public hearing on the proposed regulations was held on July 29, 2008.

Section 954(d)(1) defines *FBCSI* to mean income derived by a controlled foreign corporation (CFC) in connection with: (1) The purchase of personal property from a related person and its sale to any person, (2) the sale of personal property to any person on behalf of a related person, (3) the purchase of personal property from any person and its sale to a related person or (4) the purchase of personal property from any person on behalf of a related person, provided (in all these cases) that the property is manufactured, produced, grown or extracted outside of the CFC's country of organization and is sold for use, consumption or disposition outside of such country.

The existing regulations further define FBCSI and the applicable exceptions from FBSCI, including the exceptions to the FBCSI rules for personal property that is: (1) Manufactured, produced, constructed, grown, or extracted within the CFC's country of organization (same country manufacture exception); (2) sold for use, consumption or disposition within the CFC's country of organization; and (3) manufactured, produced, or constructed by the CFC (the manufacturing exception). See § 1.954–3(a)(2)–(4).

The existing regulations set forth certain tests to determine whether a CFC satisfies the manufacturing exception: The ''substantial transformation test'' of § 1.954–3(a)(4)(ii) and the ''substantive test'' and safe harbor of § 1.954–3(a)(4)(iii). For purposes of this preamble, the requirements of § 1.954–3(a)(4)(ii) and 1.954–3(a)(4)(iii) will be referred to collectively as the ''physical manufacturing test'' and the satisfaction of either test will be described as ''physical manufacturing.''

The proposed regulations provide a third test for satisfying the manufacturing exception, which may apply when a CFC is involved in the manufacturing process but does not satisfy the physical manufacturing test. In particular, the proposed regulations provide that a CFC will satisfy the manufacturing exception if the facts and circumstances evince that the CFC makes a substantial contribution through the activities of its employees to the manufacture, production, or construction of personal property (substantial contribution test). The proposed regulations also propose other modifications to the existing regulations to address the treatment of contract manufacturing arrangements under the FBCSI rules.

Written comments were received in response to the notice of proposed rulemaking, and a public hearing was held on July 29, 2008. After consideration of all the comments, the proposed regulations, as revised by this Treasury decision, are adopted as final and temporary regulations.

Summary of Comments and Explanation of Provisions

This Treasury decision contains final and temporary regulations relating to FBCSI. The temporary regulations contained in this Treasury decision also serve as the text of proposed regulations set forth in a notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**. The preamble to this Treasury decision will refer to the proposed regulations published in the **Federal Register** on February 28, 2008, as the proposed regulations. The preamble will refer to the regulations that are published simultaneously as temporary regulations in this Treasury decision and as proposed regulations in this issue of the **Federal Register** as the temporary regulations.

A. Substantial Contribution Test

The proposed regulations provide that a CFC will satisfy the substantial contribution test with respect to personal property only if all the facts and circumstances evince that the CFC makes a substantial contribution through the activities of its employees to the manufacture of the property. Prop. Reg. § 1.954–3(a)(4)(iv)(*b*) includes a non-exclusive list of activities (collectively, ''indicia of manufacturing'') to be considered in determining whether the CFC satisfies the substantial contribution test with respect to the manufacture, production, or construction of the personal property (manufacture of the personal property) under all the facts and circumstances.

1. General Operation of Substantial Contribution Test

In response to the proposed regulations, commentators requested further elaboration of the general operation of the substantial contribution test. For example, commentators requested guidance on the amount of activity performed by a CFC's employees that would be necessary to ''satisfy'' each individual activity listed among the indicia of manufacturing. Several commentators requested clarifications that suggested they believed that a certain threshold of employee activity was required before the activity would be considered in determining whether a CFC satisfied the substantial contribution test. Commentators requested, for example, clarification as to whether the ''vendor selection'' activity is satisfied if the CFC provides a contract manufacturer with an approved list of vendors but allows the contract manufacturer to make the final determination regarding the vendors to be used.

Commentators also requested guidance on how the indicia of manufacturing should be weighed in relation to one another and whether performing a certain minimum number of activities was required in order for

the substantial contribution test to be satisfied. Others asked that the regulations explain whether a CFC must perform any particular activity in all cases to satisfy the substantial contribution test (for example, whether a CFC must always perform oversight and direction of the manufacturing process to satisfy the substantial contribution test). Some commentators requested that the regulations emphasize that the importance of each activity would vary by industry and by taxpayer. Commentators also requested that the regulations make clear that a CFC need not perform all of the indicia of manufacturing to establish a substantial contribution, and that the weight given to activities performed by employees of the CFC will depend on the economic significance of those activities to the business of the taxpayer with respect to the product being manufactured.

Although the proposed regulations provide guidance on many of these issues, the IRS and the Treasury Department believe that additional guidance with respect to the application of the substantial contribution test is warranted in light of the comments received. Consequently, § 1.954–3(a)(4)(iv)(*c*) is added to the final regulations to provide further clarification on the application of the substantial contribution test. First, § 1.954–3(a)(4)(iv)(*c*) clarifies that all CFC employee functions contributing to the manufacture of the personal property will be considered in the aggregate when determining whether a substantial contribution is made to the manufacture of the personal property through the activities of a CFC's employees. Second, § 1.954–3(a)(4)(iv)(*c*) clarifies that there is no single activity that will be accorded more weight than any other activity in every case or that will be required to be performed in all cases. Third, it clarifies that there is no minimum threshold with respect to functions performed by employees of a CFC before their functions with respect to a given activity may be taken into account as part of the substantial contribution test. Therefore, all functions performed by a CFC's employees are considered (and given appropriate weight) under the substantial contribution test, even if the CFC's employees perform only some of the functions in connection with any one activity (for example, some, but not all, of the vendor selection) considered under that test. The weight given to any functions performed by employees of the CFC with respect to any activity will be based on the economic significance of those functions to the manufacture, production, or construction of the relevant personal property. Corresponding amendments and additional examples have been added to the final regulations to illustrate further the application of the substantial contribution test. See § 1.954–3(a)(4)(iv)(*d*).

Other commentators sought clarification as to the extent to which purely contractual assumptions of risk are considered in a substantial contribution analysis. The IRS and the Treasury Department believe that no further clarification in the final regulations is necessary to address this point. Both the proposed and final regulations provide that only activities of the CFC's employees are considered in the substantial contribution analysis and, consequently, purely contractual assumptions of risk are not considered in the substantial contribution analysis.

In addition, commentators requested that the regulations clarify that more than one person can provide a substantial contribution to the manufacturing process with respect to a given product. In response to this comment, the IRS and the Treasury Department amended the regulations to clarify that a CFC will not be precluded from making a substantial contribution to the manufacture of the personal property by the fact that other persons also make a substantial contribution to the manufacture, production, or construction of that property. Further, § 1.954–3(a)(4)(iv)(*d*) *Example 9* is added to the final regulations to illustrate that more than one person can provide a substantial contribution to the manufacture of the same property.

2. Indicia of Manufacturing

The IRS and the Treasury Department received numerous comments with respect to the specific activities listed in the proposed regulation that are considered in determining whether a CFC makes a substantial contribution through its employees to the manufacture, production, or construction of personal property.

a. Oversight and Direction of Manufacturing

Commentators requested that the IRS and the Treasury Department clarify certain issues related to the ''oversight and direction of the activities or process'' pursuant to which personal property is manufactured, produced, or constructed. Some commentators asked that the regulations provide that oversight and direction of the activities or process pursuant to which personal property is manufactured, produced, or constructed be a prerequisite for satisfying the substantial contribution test. Other commentators requested that the IRS and the Treasury Department clarify that in certain industries a substantial contribution can be made by a CFC without its employees engaging in significant oversight and direction of the activities or process pursuant to which personal property is manufactured, produced, or constructed. Some commentators focused on the fact that in an example in the proposed regulations the CFC was not treated as making a substantial contribution to the manufacture of personal property when the CFC did not ''regularly exercise'' oversight and direction with respect to the contract manufacturer. See Prop. Reg. § 1.954–3(a)(4)(iv)(*c*) *Example 1.*

The importance of oversight and direction of the activities or process pursuant to which personal property is manufactured, produced, or constructed will vary based on the facts and circumstances associated with the specific manufacture, production, or construction at issue. The IRS and the Treasury Department acknowledge that oversight and direction of the activities or process pursuant to which personal property is manufactured, produced, or constructed is likely to be an important element in many, but not all, substantial contribution analyses. Thus, to address taxpayer comments, the examples in the final regulations are amended to make clear that oversight and direction is not a prerequisite for satisfying the substantial contribution test and that in certain industries a substantial contribution could be made by a CFC without its employees engaging in oversight and direction of the activities or process pursuant to which personal property is manufactured, produced, or constructed. Finally, the examples in the final regulations do not use the potentially confusing reference to ''regularly'' exercising oversight.

b. Material Selection, Vendor Selection, and Control of the Raw Materials, Work-in-process, and Finished Goods

Some commentators asked if other activities listed among the indicia of manufacturing also represented means of exercising control of the raw materials, work-in-process and finished goods. The IRS and the Treasury Department acknowledge that some of the activities in the indicia of manufacturing may overlap with other activities in that list. The final regulations require a substantial contribution to the manufacture of the personal property through the activities of the CFC's employees and not

satisfaction of any specific activity in the indicia of manufacturing. Therefore, the IRS and the Treasury Department determined that it was not necessary to clarify whether any particular function might reasonably be included under more than one heading in the indicia of manufacturing. However, to provide further clarity, the final regulations group material selection, vendor selection, and control of the raw materials, work-in-process, and finished goods as a single activity in the indicia of manufacturing.

Commentators asked whether the control of the raw materials, work-in-process, and finished goods refers to the CFC having the contractual right to take possession of the personal property, to have title to the property, or to have economic risk of loss with respect to the property. These commentators requested clarification regarding whether tax ownership of raw materials, work-in-process and finished goods is required to have control of the raw materials, work-in-process, and finished goods. In connection with this question, commentators also asked whether a CFC can satisfy the substantial contribution test when the contract manufacturing arrangement is buy-sell or ''turnkey'' (that is, when the contract manufacturer purchases the raw materials).

Both the proposed and final regulations provide that only activities of the CFC's employees are considered in the substantial contribution analysis. Thus, mere contractual rights, legal title, tax ownership, or assumption of economic risk are not considered in the substantial contribution analysis. To provide greater clarity, the final regulations revise Prop. Reg. § 1.954–3(a)(4)(iv)(*a*), deleting the phrase ''purchased by a controlled foreign corporation'' in the first sentence of Prop. Reg. § 1.954–3(a)(4)(iv)(*a*) to eliminate any inference that a CFC needs to own the raw materials that are used in the manufacturing process. In addition, examples in the final regulations clarify that buy-sell or turnkey contract manufacturing arrangements may satisfy the substantial contribution test. See § 1.954–3(a)(4)(iv)(*d*) *Examples 3* and *9*.

c. Management of Manufacturing Profits and Management of Risk of Loss

Commentators requested clarification regarding which functions would qualify as ''management of the manufacturing profits'' or ''management of the risk of loss.'' Some commentators expressed concerns regarding the term ''management of the manufacturing profits.'' Other commentators suggested that it would add clarity if ''management of the risk of loss'' were deleted from Prop. Reg. § 1.954–3(a)(4)(iv)(*b*)(*1*) and included with ''management of manufacturing profits'' in a single item in the indicia of manufacturing. Some commentators expressed concern that the term ''management of the risk of loss'' implicitly excluded all other risk management functions. One commentator expressed the view that the indicia of manufacturing should include reference to management of enterprise risk, other than risks pertaining exclusively to sales and marketing functions. Some commentators suggested that management of the manufacturing profits might refer to such activities as the management of risks related to the raw materials and the utilization of plant capacity, but others thought it might encompass the finance function of a company.

The IRS and the Treasury Department agree that further clarification is needed as to the functions that are intended to be included within what was labeled ''management of the manufacturing profits'' and ''management of the risk of loss'' in the proposed regulations. The IRS and the Treasury Department intend that the substantial contribution test recognize contributions made by a CFC's employees to the manufacturing process through functions which help to ensure that a plant is run in an economically efficient manner, such as optimization of plant capacity and reduction of waste (for example, waste of raw materials). On the other hand, not all corporate managerial decisions are intended to be considered in the substantial contribution test, because many such decisions are not directly related to the manufacture of the personal property with respect to which the substantial contribution analysis is being performed. For example, the IRS and the Treasury Department do not intend that corporate finance decisions be considered in the substantial contribution test. Similarly, the IRS and the Treasury Department do not intend that the general management of enterprise risk be considered in the substantial contribution test.

The IRS and the Treasury Department concluded that the term ''management of the manufacturing costs or capacities'' more accurately reflects the type of functions originally contemplated by ''management of the manufacturing profits'' in the proposed regulations and is also related to the types of functions contemplated by the ''management of the risk of loss.'' Accordingly, the activity labeled ''management of the manufacturing profits'' in the proposed regulations is replaced in the final regulations with an activity entitled ''management of manufacturing costs or capacities.'' Further, the final regulations include a parenthetical list of functions (that is, managing the risk of loss, cost reduction or efficiency initiatives associated with the manufacturing process, demand planning, production scheduling, or hedging raw material costs) to elaborate on the meaning of the activity.

d. Control of Logistics

Commentators asked for clarification regarding the scope of logistical functions that will contribute towards a substantial contribution by a CFC. This activity is intended to include, for example, arranging for delivery of raw materials to a contract manufacturer, but to exclude, for example, delivery of finished goods to a customer. The final regulations provide further clarity on this issue by revising the activity to read ''control of manufacturing related logistics.''

e. Direction of the Development, Protection, and Use of Trade Secrets, Technology, Product Design, and Design Specifications, and Other Intellectual Property Used in Manufacturing the Product

Commentators noted that the ''and'' in the description of this activity in the proposed regulations could be read to mean that directing the ''development, protection, and use'' of intellectual property are all required for this activity to be considered in the substantial contribution analysis. Commentators requested that these activities be stated in the disjunctive. The IRS and the Treasury Department adopted this comment, replacing ''and'' with ''or'' in the final regulations. This clarification is consistent with providing that all functions performed by a CFC's employees are considered (and given appropriate weight) under the substantial contribution test. Thus, the CFC's employees' activities are considered regardless of whether the CFC's employees perform all or only some of the functions listed in any enumerated item in the indicia of manufacturing.

The term ''protection'' is also deleted from the final regulations. The IRS and the Treasury Department were concerned that absent this clarification the final regulations could be read to provide that legal work performed by a CFC's in-house legal staff was considered under the substantial contribution test, including in cases where, for example, litigation success could be heavily correlated to

profitability or business failure with respect to a product. Further, the IRS and the Treasury Department modified the description of the activity in the final regulations to clarify that developing, or directing the use or development of, trade secrets, technology, or other intellectual property, are considered under the substantial contribution test, but only when activities of this nature are undertaken for the purpose of the manufacture of the personal property.

Commentators asked whether the intellectual property referred to in Prop. Reg. § 1.954–3(a)(4)(iv)(*b*)(*9*) included marketing intangibles. The activity as described in both the proposed and final regulations is with respect to intellectual property used in the manufacture of the personal property. Thus, developing, or directing the use or development of, marketing intangibles is not intended to be considered in the substantial contribution test.

3. Anti-abuse Rule and Safe Harbor

The IRS and the Treasury Department requested comments on whether the substantial contribution test should include an anti-abuse rule and safe harbor. In particular, comments were requested as to whether it would be appropriate to add an anti-abuse rule to prevent a CFC from satisfying the substantial contribution test in cases in which a significant portion of the direct or indirect contributions to the manufacture of personal property provided collectively by the CFC and any related U.S. persons are provided by one or more related U.S. persons. Commentators recommended that in determining whether a CFC makes a substantial contribution it should not be relevant whether other persons (whether U.S. or foreign, related or unrelated) contribute to the manufacturing process. The IRS and the Treasury Department agree with commentators that the substantial contribution test should focus on whether the activities of the CFC itself are substantial without comparing those activities to those of other persons. Thus, the final regulations do not adopt such a rule. Examples in the final regulations also illustrate that the contributions of other persons to the manufacture of a product are not relevant to the analysis of whether a CFC makes a substantial contribution to the manufacturing process. See § 1.954–3(a)(4)(iv)(*d*) *Examples 6, 7,* and *9*.

The IRS and the Treasury Department also requested comments as to whether one or more safe harbors should be added to the substantial contribution test of the proposed regulations. Some commentators suggested that a CFC that contributes at least twenty percent of the costs of manufacturing personal property should be deemed to have substantially contributed to its manufacture. Other commentators suggested that a safe harbor was only appropriate if it were made clear that such a safe harbor would not function as a minimum standard and would be flexible enough to accommodate multiple industries. Many other commentators recommended that the IRS and the Treasury Department not adopt a safe harbor. The IRS and the Treasury Department concluded that no safe harbor could fairly apply across the range of industries potentially subject to § 1.954–3, and therefore no safe harbor is provided in the final regulations.

4. Definition of Employee

The IRS and the Treasury Department requested comments as to whether the requirement in the proposed regulations that the activities of the CFC be performed by its employees should take into account commercial arrangements where individuals performing services for the CFC while not on its payroll are nevertheless controlled by employees of the CFC. Commentators requested that the regulations expand the definition of the term ''employee'' to include various commercial or economic arrangements where individuals who perform services for a CFC under the CFC's direction and control are not necessarily the CFC's employees under local law. In particular, commentators suggested that the term ''employee'' could be defined for purposes of the substantial contribution test using section 3121(d)(2). Other commentators asked that the term ''employee'' be defined more broadly to include anyone in an agency relationship with a CFC.

The IRS and the Treasury Department agree that clarification of the term ''employee'' will promote more effective application of these regulations. The IRS and the Treasury Department also agree that activities performed by certain non-payroll workers should be considered in determining whether the CFC provides a substantial contribution through ''its employees.'' However, the IRS and the Treasury Department concluded that it would be inappropriate to broaden the definition of employee to include anyone in an agency relationship with a CFC, because it could create unintended branch rule issues for taxpayers (for example, as a result of employees of a contract manufacturer being treated as employees of the CFC under such a definition). Thus, the final regulations provide that the term *employee* means any individual who, under § 31.3121(d)–1(c), has the status of an employee for U.S. Federal tax purposes. This definition of the term ''employee'' may encompass certain seconded workers, part-time workers, workers on the payroll of a related employment company whose activities are directed and controlled by CFC employees, and contractors, so long as those individuals are deemed to be employees of the CFC under § 31.3121(d)–1(c). Consistent with commentators' request, this definition of the term employee may result in an individual being treated as an employee of two or more entities simultaneously.

5. Product Grouping

Commentators requested that the determination of whether a CFC provides a substantial contribution to the manufacture of the personal property be made on the basis of a group or line of related products rather than on a product-by-product basis. The IRS and the Treasury Department believe that the substantial contribution test must be met with respect to each product. Whether manufactured goods are separate products or a single product for this purpose is determined by reference to the distinctions or lack thereof made by the CFC in its business operations and in its books and records, rather than by reference to a third party's definition of a product or an industry product classification system, such as the Standard Industrial Classification Code. The IRS and the Treasury Department recognize that some activities taken into account under the substantial contribution test are not performed with respect to each individual unit of a particular product manufactured under a contract manufacturing arrangement. Section 1.954–3(a)(4)(iv)(*d*) *Example 11* has been added to the final regulations to address these comments.

6. Treatment of Partnerships

Commentators requested that the regulations adopt principles to determine when the employees of a partnership should be treated as employees of the CFC for purposes of determining whether the CFC's relative economic interest in the partnership should be relevant in determining whether the CFC satisfies the substantial contribution test. The IRS and the Treasury Department concluded that this issue was beyond the scope of this regulatory project. However, the IRS and the Treasury Department continue to study this issue and welcome comments.

7. Rebuttable Presumption

The proposed regulations provide a rebuttable presumption that the CFC does not satisfy the substantial contribution test when the activities of a branch of the CFC satisfy the physical manufacturing test. The presumption can only be rebutted if the taxpayer can prove to the satisfaction of the Commissioner that the CFC satisfied the substantial contribution test. Commentators suggested that satisfaction of the physical manufacturing test and satisfaction of the substantial contribution test should be treated equally under the regulations. Commentators also expressed the view that the standard required to rebut the presumption was either too subjective, imposed an improperly high standard, or both. They recommended that if a rebuttable presumption was retained, the standard required to rebut the presumption should be clear and convincing evidence.

In response to the comments received, the IRS and the Treasury Department reconsidered the ability to examine a CFC's claim that it substantially contributes to the manufacture of the personal property when the activities of its branch satisfy the physical manufacturing test. Upon further study, the IRS and the Treasury Department concluded that the substantial contribution test can be administered without the benefit of a rebuttable presumption that a CFC does not satisfy the substantial contribution test when the activities of a branch of the CFC satisfy the physical manufacturing test. Thus, these final and temporary regulations do not contain a rebuttable presumption. The IRS and the Treasury Department took into account the request for parity of treatment with respect to satisfaction of the physical manufacturing test and the substantial contribution test in reaching this conclusion, as well as with respect to other aspects of the temporary regulations, as discussed further in Parts C and D of this preamble.

8. Documentation

Some commentators requested guidance on how taxpayers should document their activities for application of the substantial contribution test. Because the necessary documentation will vary by industry and by taxpayer, the IRS and the Treasury Department believe that creating general rules of documentation would prove impracticable and would not allow for enough flexibility in application of the substantial contribution test. Accordingly, the final regulations do not include documentation rules.

9. Automated Manufacturing

Several comments were received concerning Prop. Reg. § 1.954–3(a)(4)(iv)(*c*) *Example 4*. In *Example 4*, a CFC owns software and network systems that remotely and automatically (without human involvement) order raw materials for use by the contract manufacturer, take customer orders and route them to the contract manufacturer, and perform quality control. Although the CFC has a small number of computer technicians monitoring the software and network systems, the software and network systems were developed by employees of DP, the CFC's domestic parent corporation. Those DP employees supervise the CFC's computer technicians, evaluate the results of the automated manufacturing business, make ongoing operational decisions related to the performance of the manufacturing process, redesign and update the products and the manufacturing process, and develop all of the upgrades and patches for the software and network systems owned by the CFC. The example concludes that the CFC does not provide a substantial contribution to the manufacture of Product X.

Commentators expressed concern that Prop. Reg. § 1.954–3(a)(4)(iv)(*c*) *Example 4* did not recognize the importance of automated manufacturing in modern business practices. These commentators noted that manufacturing processes are increasingly automated and explained that in some high technology industries, automated manufacturing processes are the only way to manufacture and test the quality of certain products. In such industries, commentators noted that human involvement in various parts of the manufacturing process could be counterproductive. Some commentators were concerned that Prop. Reg. § 1.954–3(a)(4)(iv)(*c*) *Example 4* penalized such automated manufacturing processes under the substantial contribution test.

The IRS and the Treasury Department agree that a CFC may provide a substantial contribution to a largely automated manufacturing process through its employees. Section 1.954–3(a)(4)(iv)(*d*) *Example 5* contains the same facts as Prop. Reg. § 1.954–3(a)(4)(iv)(*c*) *Example 4*. Under those particular facts, substantial operational responsibilities and decision making by humans are required for the manufacturing process; however, they are not performed by the CFC. To provide additional guidance, the final regulations include an additional example, § 1.954–3(a)(4)(iv)(*d*) *Example 6*, which illustrates that a CFC whose employees perform most of the functions that DP's employees perform in § 1.954–3(a)(4)(iv)(*d*) *Example 5* makes a substantial contribution to the manufacturing process. This result applies even though DP's employees also contribute to the manufacturing process. Section 1.954–3(a)(4)(iv)(*d*) *Example 7* further illustrates that the CFC can make a substantial contribution through the activities of its employees regardless of whether the software and network systems were purchased by the CFC. These examples illustrate that the evaluation of whether a CFC makes a substantial contribution through its employees is determined based on whether industry-sufficient substantial contribution activities are conducted by employees of the CFC.

B. The ''Its'' Argument

The proposed regulations clarify that for purposes of determining FBCSI a CFC qualifies for the manufacturing exception only if the CFC, acting through its employees, manufactured, produced, or constructed the relevant personal property within the meaning of § 1.954–3(a)(4)(i). In response to the proposed regulations, some commentators maintained that a CFC need not satisfy the physical manufacturing test or the substantial contribution test to exclude a sale from FBCSI as long as the personal property sold is not the same as the property originally purchased by the CFC.

The IRS and the Treasury Department believe, as described in the preamble to the proposed regulations, that this position, commonly referred to as the ''its'' argument, is contrary to existing law, and represents an incorrect reading of section 954(d)(1). The final regulations accordingly maintain the rules provided in the proposed regulations regarding when personal property sold by a CFC will be considered to be other than the property purchased by the CFC.

C. Same Country Manufacture Exception

Commentators requested that the regulations incorporate the substantial contribution test in the same country manufacture exception. The IRS and the Treasury Department generally agree with commentators that if the substantial contribution test is sufficient to constitute the manufacture of the personal property where a CFC substantially contributes to the manufacture, production, or construction of that property, then it

should be equally sufficient if those activities are performed by a related person (as defined in section 954(d)(3)) in the CFC's country of organization. However, the IRS and the Treasury Department concluded that the same country manufacture exception would be difficult to administer and enforce in the case of a substantial contribution performed by an unrelated third party. Commentators suggested that these concerns could be ameliorated if taxpayers were required to maintain documentation with respect to a third party's substantial contribution. The IRS and the Treasury Department do not believe a documentation requirement adequately addresses these concerns because the IRS may be unable to audit the third party to verify if those substantial contribution activities in fact took place. Therefore, the final regulations provide that the same country manufacture exception is available to taxpayers in cases when a related person provides a substantial contribution to the manufacture of the personal property in the CFC's country of organization. The final regulations also retain the rule provided in the proposed regulations modifying the application of the principles of § 1.954–3(a)(4)(ii) and (a)(4)(iii) to reflect that the personal property manufactured, produced, or constructed in the country of organization of the selling corporation under the principles of § 1.954–3(a)(4)(ii) and (a)(4)(iii) will qualify for the same country exception regardless of whose employees engage in qualifying manufacturing activities in that country.

D. Branch Rule

In addition to the amendments to § 1.954–3(a), the proposed regulations also proposed amendments to the rules of § 1.954–3(b) dealing with the application of the FBCSI rules to CFCs with branches or similar establishments (the branch rule), particularly the rules dealing with manufacturing branches. For the remainder of this preamble, the word ''branch'' will be used to refer to a ''branch or similar establishment.''

1. Branch Definition

Some commentators requested that the regulations define the term ''branch'' for purposes of the branch rule. These commentators suggested various definitions for the IRS and the Treasury Department to consider. Commentators suggested, for instance, that a branch be defined as a permanent establishment, as a business activity in a jurisdiction outside a CFC's country of organization that has separate books and records, or as a trade or business outside a CFC's country of organization. Commentators pointed to precedents in the section 367 and 987 regulations. Alternatively, some commentators requested that the regulations make clear that a de minimis amount of activity outside of a CFC's country of organization (for example, traveling employees) does not constitute a branch. Other commentators warned that requiring too high a level of activity outside of a CFC's country of organization before a CFC was treated as having a ''branch'' would make it possible for a CFC organized in a lower-tax jurisdiction to contribute substantially to manufacturing activities in a higher-tax jurisdiction without causing the CFC to operate through a branch. Still other commentators suggested that courts have concluded that the IRS and the Treasury Department lack the regulatory authority to determine what constitutes a branch, and they may only address the consequences flowing from the existence of a branch.

The IRS and the Treasury Department determined that defining a branch was beyond the scope of this regulatory project. However, the temporary regulations retain an example similar to Prop. Reg. § 1.954–3(b)(1)(ii)(*c*)(*3*)(*f*) *Example 3*, which illustrates that employees of a CFC that travel to a contract manufacturer's location outside the CFC's country of organization do not necessarily give rise to a branch in that location. See § 1.954–3T(b)(1)(ii)(*c*)(*3*)(*v*) *Example 6*. See also Part D.3.b of this preamble.

2. Determination of Hypothetical Effective Tax Rate

Commentators requested that the regulations clarify that the tax rate disparity tests contained in §§ 1.954–3(b)(1)(i)(*b*) and (b)(1)(ii)(*b*) take into account incentive tax rates and other similar foreign tax relief available to a CFC in calculating the hypothetical effective tax rate of tax.

The IRS and the Treasury Department recognize that the tax rate disparity tests should take into account the actual tax rate paid with respect to the sales income by the selling branch or remainder and the hypothetical effective tax rate that would be paid by the manufacturing branch (or remainder) on that sales income under the laws of the country in which the manufacturing branch is located (or, in the case of a remainder, the country of organization of the CFC) if it were derived from sources within that country. Thus, the IRS and the Treasury Department agree that uniformly available tax incentives are to be considered in determining the hypothetical effective tax rate to be used in applying the tax rate disparity tests. In contrast, if a sales affiliate in the country of manufacturing can theoretically receive certain tax relief by taking certain actions, for example, by applying for special treatment pursuant to a ruling process, but the taxpayer has not affirmatively obtained such tax relief for the manufacturing branch (or remainder), then the hypothetical effective tax rate that would be paid by the manufacturing branch (or remainder) were it to derive the sales income should be the effective tax rate that would be applicable in that jurisdiction without such tax relief. The IRS and the Treasury Department believe that no change to the text of the existing regulations is necessary to address these points. However, § 1.954–3T(b)(4) *Example (8)* is included in the temporary regulations to illustrate that uniformly applicable incentive tax rates are taken into account in determining the hypothetical effective tax rate.

The IRS and the Treasury Department concluded that other questions and requests in this area, including further clarification of the methodology for calculation of hypothetical tax rates, and for changes to the assumptions used in applying the tax rate disparity tests and determining the hypothetical effective tax rate, are beyond the scope of this regulatory project. However, the IRS and the Treasury Department continue to study these questions and welcome comments.

3. Multiple Manufacturing Branch Rules

a. Determination of the Location of Manufacturing

Under Prop. Reg. § 1.954–3(b)(1)(ii)(*c*)(*3*), the relevant tax rate disparity test is applied by giving satisfaction of the physical manufacturing test precedence over satisfaction of the substantial contribution test when multiple branches, or one or more branches and the remainder of the CFC, perform manufacturing activities with respect to the same item of personal property. If more than one branch (or one or more branches and the remainder of the CFC) each independently satisfies the physical manufacturing test, then the branch or the remainder of the CFC located or organized in the jurisdiction that would impose the lowest effective rate of tax is treated as the location of manufacturing, producing, or constructing of the personal property for purposes of applying the tax rate disparity test (lowest-of-all-rates rule). If only one branch (or only the remainder of a CFC) independently satisfies the physical manufacturing test, then that

branch (or remainder) is treated as the location of manufacturing, producing, or constructing of the personal property (location of manufacturing) for purposes of the tax rate disparity test.

If none of the branches or the remainder of the CFC independently satisfies the physical manufacturing test, but the CFC as a whole satisfies the substantial contribution test, then the location of manufacturing under the proposed regulations is the location of the branch or the remainder of the CFC that provides the predominant amount of the CFC's substantial contribution to the manufacture of the personal property (predominant place rule). If a predominant amount of the CFC's contribution to the manufacture of the personal property is not provided by any one location, then the location of manufacturing for purposes of applying the manufacturing branch tax rate disparity test under the proposed regulations is that place (either the remainder of the CFC or one of its branches) where manufacturing activity with respect to that property is performed and which would impose the highest effective rate of tax (highest-of-all-rates rule) when applying either § 1.954–3(b)(1)(i)(*b*) or (b)(1)(ii)(*b*).

The IRS and the Treasury Department received multiple comments comparing and contrasting the highest- and lowest-of-all-rates rules. For example, commentators asked why the lowest-of-all-rates rule should apply when more than one branch (or one or more branches and the remainder of the CFC) independently satisfy the physical manufacturing test, whereas the highest-of-all-rates rule should apply when none of the branches or the remainder of the CFC independently satisfies the physical manufacturing test but the CFC as a whole satisfies the substantial contribution test. Commentators suggested that satisfaction of the physical manufacturing test and the substantial contribution test should be treated equally under the regulations, and therefore suggested having the same rule in both circumstances. These commentators proposed a lowest-of-all-rates rule or the use of a weighted average of the tax rate of each branch or remainder of the CFC in both instances.

The IRS and the Treasury Department generally agreed with these comments. The IRS and the Treasury Department adopted taxpayers' comment that the same rule should apply consistently when a branch (or remainder) independently satisfies § 1.954–3(a)(4)(i), regardless of whether it satisfies the physical manufacturing test or the substantial contribution test. Therefore the rules set forth in the proposed regulations are modified in the temporary regulations to provide that the lowest-of-all-rates rule will apply whenever a branch (or remainder) independently satisfies § 1.954–3(a)(4)(ii), (iii), or (iv). However, providing parity of treatment for satisfaction of the physical manufacturing test and the substantial contribution test in respect of the lowest-of-all-rates rule is not sufficient to determine the location of manufacturing in cases where a CFC satisfies the substantial contribution test, yet no branch (or remainder) independently satisfies § 1.954–3(a)(4)(iv).

Commentators questioned how to treat branches making contributions to the manufacture of the personal property through the activities of employees when no branch independently satisfies § 1.954–3(a)(4)(iv). Some commentators expressed concern that it would be difficult to compare the relative contributions of various locations to determine which branch or remainder of the CFC made a predominant contribution under the predominant place rule. Other commentators requested greater guidance regarding the meaning of predominant contribution. Many commentators suggested that the highest-of-all-rates rule in the proposed regulations could lead to arbitrary results when no predominant contributor could be identified.

The IRS and the Treasury Department generally agreed with these comments. Consequently, the temporary regulations revise the rules for determining the location of manufacture of the personal property when more than one branch (or one or more branches and the remainder) contributes to the manufacture of the personal property but no branch (or remainder) independently satisfies the physical manufacturing test or the substantial contribution test. The revised rules are based on the principle that the branch rule should apply in situations where purchase or sale activities with respect to the personal property are separated from manufacturing activities conducted by the CFC such that a demonstrably greater amount of manufacturing activity with respect to that property occurs in jurisdictions with tax rate disparity relative to the sales or purchase branch (or, in the case of a purchasing or selling remainder, the demonstrably greater amount of manufacturing activity with respect to the personal property occurs in jurisdictions with tax rate disparity relative to the purchasing or selling remainder).

Under the temporary regulations, if a demonstrably greater amount of manufacturing activity with respect to the personal property occurs in jurisdictions without tax rate disparity relative to the sales or purchase branch, the location of the sales or purchase branch will be deemed to be the location of manufacture of the personal property. In that case, the purchase or sales activities with respect to the property purchased or sold by or through the sales or purchase branch of the CFC will not, for purposes of determining FBCSI in connection with the sale of that property, be deemed to have substantially the same tax effect as if a branch were a wholly owned subsidiary corporation of the CFC. Otherwise, the location of manufacture of the personal property will be deemed to be the location of a manufacturing branch (or remainder) that has tax rate disparity relative to the sales or purchase branch. In that case, the purchase or sales activities with respect to the property purchased or sold by or through the sales or purchase branch of the CFC will be deemed to have substantially the same tax effect as if a branch were a wholly owned subsidiary corporation of the CFC, and that branch will be treated as a separate corporation for purposes of applying the regulations.

The temporary regulations apply analogous rules in the case of purchase or sales activity being conducted through the jurisdiction under the laws of which the CFC is organized. In such cases, however, the analysis focuses on whether the demonstrably greater amount of manufacturing activity with respect to the personal property occurs in jurisdictions that do or do not have tax rate disparity relative to the jurisdiction under the laws of which the CFC is organized. The temporary regulations incorporate examples under § 1.954–3T(b)(1)(ii)(*c*)(*3*)(*v*) to illustrate the application of these rules.

b. Location of Activities

The proposed regulations provide that for purposes of the multiple manufacturing branch rules the location of any activity with respect to the manufacture of the personal property is where the CFC's employees engage in such activity. Commentators suggested that in some cases the proposed regulations left it unclear, for purposes of determining the location of manufacturing, which jurisdiction was accorded credit for activities performed by an employee who is traveling temporarily to a foreign jurisdiction. Some commentators suggested that the location of activity rule should be removed or that the regulations should

clarify that, for instance, the activities of employees of a CFC based in the jurisdiction under the laws of which the CFC is organized, even while traveling outside the CFC's country of organization, would generally be credited toward establishing that the jurisdiction under the laws of which the CFC is organized provided a predominant amount of a CFC's substantial contribution. The IRS and the Treasury Department believe the text of § 1.954–3T(b)(1)(ii)(*c*)(*3*)(*iv*) makes clear that when an employee travels to perform activities, those activities are credited to the location in which the activities are conducted if there is a branch or remainder of the CFC in that jurisdiction. Section 1.954–3T(b)(1)(ii)(*c*)(*3*)(*v*) provides examples to further clarify this result.

Other commentators asked which location was accorded credit, if any, for activities performed by traveling employees of the CFC while located in a country in which there is no branch or remainder of the CFC. The temporary regulations provide that the location of any manufacturing activity is where the employees of the CFC perform that activity. Thus, the activities of employees while traveling to a country where the CFC does not maintain a branch or remainder are not credited to the branch or remainder where the traveling employees are regularly employed for purposes of determining the location of manufacture of the personal property under the branch rule. Such activities, however, can be taken into account for purposes of satisfying the manufacturing exception and the substantial contribution test. See § 1.954–3T(b)(1)(ii)(*c*)(*3*)(*v*) *Example 6*.

c. Clarifying Application of the Rule for Determining the Remainder of the CFC When Activities Are Performed in Multiple Locations

Prop Reg. § 1.954–3(b)(2)(ii)(*a*) provides that when treating the location of sales or purchase income as a separate corporation for purposes of determining whether FBCSI is realized, that separate corporation will exclude any branch or the remainder of the CFC that would be treated as a separate corporation, if the hypothetical tax rate imposed by the jurisdiction of each such branch or the remainder of the CFC were separately tested against the effective rate of tax imposed on the sales or purchase income under the relevant tax rate disparity test. Commentators suggested that the application of this rule for determining the remainder of the CFC when activities are preformed in multiple locations is unclear. To clarify, the language from the proposed regulations is revised in the temporary regulations to describe what is included in the remainder, rather than what is excluded from the remainder, for purposes of determining whether there is FBCSI, after it is determined that a manufacturing branch should receive treatment as a separate corporation for purposes of applying the regulations. See § 1.954–3T(b)(2)(ii)(*a*).

As with the rule provided in the proposed regulations, this rule is intended to provide that the activities of all branch locations (or, in the case of a remainder, the activities in the jurisdiction under the laws of which the CFC is organized) that do not have tax rate disparity relative to the sales or purchase branch location (or, in the case of a purchasing or selling remainder, the jurisdiction under the laws of which the CFC is organized) may be taken into account together with the activities of the sales or purchase branch (or, in the case of a purchasing or selling remainder, activities of the remainder of the CFC in the jurisdiction under the laws of which the CFC is organized) for purposes of applying the separate corporation analysis required under the regulations and determining whether the sales income of the sales or purchase branch (or remainder) is FBCSI. Such determination will depend on whether the substantial contribution test is satisfied by the combined activities of the sales or purchase branch (or remainder) and the other locations aggregated with the sales or purchase branch (or remainder).

4. Coordination of Sales and Manufacturing Branch Rules

Commentators requested guidance on how the sales or purchase branch rules interact with the manufacturing branch rules. The current manufacturing branch rules contemplate the existence of a sales or purchase branch and a manufacturing branch. The rules provide that in such an instance the sales or purchase branch is treated as the remainder of the CFC for purposes of applying the tax rate disparity test. However, the sales or purchase branch rules of § 1.954–3(b)(1)(i) of the existing regulations do not indicate that those rules do not apply in cases where the manufacturing branch rules are applied. Commentators were concerned that the manufacturing branch rules would be applied in addition to, rather than in lieu of, the sales or purchase branch rules.

The IRS and the Treasury Department agree that if one or more sales or purchase branches are used in addition to a manufacturing branch and § 1.954–3T(b)(1)(ii)(*c*)(*1*) (use of one or more sales or purchases branches in addition to a manufacturing branch) is applied with respect to income from the sale of an item of personal property, then the sales or purchasing branch rules do not also apply to determine whether that income is FBCSI. Therefore, the temporary regulations clarify this point. See § 1.954–3(b)(1)(i)(*c*).

5. Unrelated to Unrelated Transactions

Commentators suggested that there was uncertainty as to whether a substantial contribution to the manufacture, production, or construction of personal property by a CFC could cause the CFC to earn FBCSI in cases where, in the absence of the substantial contribution test, some taxpayers had taken the position that they were outside the scope of the FBCSI rules. Some commentators expressed concern that transactions that are not currently subject to the existing regulations may become subject to the regulations as a result of the interaction of the substantial contribution test and the manufacturing branch rule. Other commentators suggested more generally that it was unclear if the substantial contribution test might create a branch through which a CFC carries on activities in a contract manufacturer's jurisdiction. Commentators suggested that taxpayers should be exempted from the branch consequences of the regulations by providing that the manufacturing branch rule only apply if the CFC was relying on the manufacturing exception for purposes of section 954(d)(1), or alternatively that the substantial contribution test should be elective. In this context, commentators noted that placing a CFC's substantial contribution activities, which are performed outside the country where the sales activities are performed, in a separately incorporated entity could prevent the CFC from having a branch that is subject to the manufacturing branch rule as a result of such activities.

The IRS and the Treasury Department agree that taxpayers may be subject to the FBCSI rules as a result of CFC employees performing indicia of manufacturing activities through a branch outside the country of organization of a CFC. The IRS and the Treasury Department believe this result is clear in the proposed regulations, and therefore no modifications are made to the text of the temporary regulations to clarify further this result. The IRS and the Treasury Department note that many commentators criticized the proposed regulations for drawing inappropriate distinctions between satisfaction of the

physical manufacturing test and satisfaction of the substantial contribution test, and argued that updating the manufacturing exception in the context of modern business enterprise models required treating with equal importance and weight physical manufacturing and activities satisfying the substantial contribution test. The IRS and the Treasury Department adopted this comment in both the final regulations and the temporary regulations and, accordingly, did not incorporate in the temporary regulations an exception regarding activities performed through a branch located outside the country of organization of a CFC for cases in which, in the absence of the substantial contribution test, some taxpayers had taken the position that they were outside the scope of the FBCSI rules.

One commentator noted that while there are strong policy reasons for the substantial contribution test and the branch rules to apply in the case of ''unrelated to unrelated'' transactions, the IRS and the Treasury Department should consider a special delayed effective date to allow taxpayers in this position time to restructure their operations in light of the regulations. The commentator argued that such taxpayers had been outside the scope of the FBCSI rules prior to these regulations and should be provided reasonable time to restructure. For a discussion of the effective date of the final and temporary regulations, see Part F of this preamble.

6. Branch Rule Examples

Commentators expressed concern that the facts of Prop. Reg. § 1.954–3(b)(1)(ii)(*c*)(*3*)(*f*) *Example 4* ascribed most substantial contribution activities to the remainder, but determined that the remainder had not met the substantial contribution test. In the example, the remainder performs seven activities listed in the indicia of manufacturing of the proposed regulations, whereas Branch A performs only one activity (design) and Branch B performs only two activities. The example was intended to show that in a CFC's particular industry, the weight accorded to the activities performed by each branch can be comparable, even though a different number of activities occur in different locations, because the economic significance of the activities conducted in each location is comparable. However, the IRS and the Treasury Department recognize that the example may have caused confusion for taxpayers. Therefore, the allocation of activities in *Example 4* of Prop. Reg. § 1.954–3(b)(1)(ii)(*c*)(*3*)(*f*) has been revised in § 1.954–3T(b)(1)(ii)(*c*)(*3*)(*v*) *Example 3*. Moreover, *Examples 4, 5*, and *6* of Prop. Reg. § 1.954–3(b)(1)(ii)(*c*)(*3*)(*f*) have been restructured in the temporary regulations to be consistent with the revisions to the branch rules.

Commentators also noted that *Example 4* and *Example 5* of Prop. Reg. § 1.954–3(b)(1)(ii)(*c*)(*3*)(*f*) suggest that income other than sales or purchasing income may be FBCSI. These examples are amended in the temporary regulations to be consistent with section 954(d)(2), which provides that income attributable to the carrying on of purchase or sales activities by a branch may be FBCSI.

Commentators requested that the IRS and the Treasury Department add an example to the regulations to illustrate how the substantial contribution test and the branch rules operate in cases involving multiple manufacturing branches and multiple sales branches. The temporary regulations include such an example. See § 1.954–3T(b)(1)(ii)(*c*)(*3*)(*v*) *Example 5*.

The temporary regulations also include an example illustrating the operation of the location of manufacture rules under § 1.954–3T(b)(1)(ii)(*c*)(*3*) and the application of the substantial contribution test when a tested manufacturing location has been determined to have tax rate disparity with a tested sales location. See § 1.954–3T(b)(4) *Example (9). Example (9)* illustrates that a tested sales location can satisfy the substantial contribution test for purposes of determining FBCSI once it has been determined that a tested manufacturing location should be treated as a separate corporation for purposes of determining FBCSI. Although a branch that has tax rate disparity with the tested sales location is the tested manufacturing location, *Example (9)* concludes that the CFC does not have FBCSI from the sale of the personal property because, after applying the aggregation rules of § 1.954–3T(b)(2)(ii)(*a*), the tested sales location satisfies § 1.954–3(a)(4)(iv).

E. Conforming Amendments

Sections 1.954–3(a)(1)(i) and (c) of the existing regulations contain cross-references to foreign base company shipping income under § 1.954–6. Section 954 was amended by Public Law 108–357 in 2004, and foreign base company shipping income was removed as a separate category of foreign base company income. The final regulations are amended by deleting both references to foreign base company shipping income to reflect the 2004 amendment to section 954.

Section 1.954–3(a)(1)(i) of the existing regulations defines ''related person'' and ''unrelated person'' by an obsolete cross reference to § 1.954–1(e). The final regulations are amended to define ''related person'' and ''unrelated person'' with reference to § 1.954–1(f).

F. Effective Date

Several commentators requested that the new regulations provide for a delayed effective date to allow taxpayers to implement supply chain and structural changes that may be required to satisfy the substantial contribution test and the branch rules. The IRS and the Treasury Department agree that a delayed effective date is appropriate for taxpayers whose structures require modification to accommodate the new regulations. Accordingly, these final and temporary regulations will apply to taxable years of CFCs beginning after June 30, 2009, and for taxable years of United States shareholders in which or with which such taxable years of the CFCs end. Thus, the final and temporary regulations will become applicable January 1, 2010, for CFCs whose taxable year is the calendar year. The temporary regulations will expire on or before December 23, 2011. In addition, a taxpayer may choose to apply these final and temporary regulations retroactively with respect to its open taxable years. The taxpayer may so choose if and only if the taxpayer and all members of the taxpayer's affiliated group apply both the final and temporary regulations, in their entirety, to the earliest taxable year of each controlled foreign corporation that ends with or within an open taxable year of the taxpayer and to all subsequent taxable years. A taxpayer that chose, prior to December 24, 2008, to apply Prop. Reg. § 1.954–3 (73 FR 10716 as corrected at 73 FR 20201) in its entirety to all of the taxpayer's open taxable years in which or with which a taxable year of a controlled foreign corporation of the taxpayer ended, may continue to apply Prop. Reg. § 1.954–3 (73 FR 10716 as corrected at 73 FR 20201) in its entirety with respect to all of the taxpayer's open taxable years that begin prior to July 1, 2009.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because the regulations do not impose a collection

of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these final and temporary regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Ethan Atticks of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for 26 CFR part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.954–3 is amended by:

■ 1. Revising paragraphs (a)(1)(i), (a)(1)(iii) *Examples 1* and *2*, (a)(2), (a)(4)(i), (a)(4)(ii), (a)(4)(iii), (a)(6)(i), and (c).

■ 2. Adding paragraphs (a)(4)(iv) and (d).

■ 3. Removing and reserving paragraphs (b)(1)(i)(*c*), (b)(1)(ii)(*a*), (b)(1)(ii)(*c*), (b)(2)(i)(*b*), (b)(2)(i)(*d*), (b)(2)(ii)(*a*), (b)(2)(ii)(*b*), (b)(2)(ii)(*e*) and (b)(4) *Example (3)*.

The additions and revisions read as follows:

§ 1.954–3 Foreign base company sales income.

(a) * * *

(1) *In general*—(i) *General rules.* Foreign base company sales income of a controlled foreign corporation shall, except as provided in paragraphs (a)(2), (a)(3) and (a)(4) of this section, consist of gross income (whether in the form of profits, commissions, fees or otherwise) derived in connection with the purchase of personal property from a related person and its sale to any person, the sale of personal property to any person on behalf of a related person, the purchase of personal property from any person and its sale to a related person, or the purchase of personal property from any person on behalf of a related person. See section 954(d)(1). For purposes of the preceding sentence, except as provided in paragraphs (a)(2) and (a)(4) of this section, personal property sold by a controlled foreign corporation will be considered to be the same property that was purchased by the controlled foreign corporation regardless of whether the personal property is sold in the same form in which it was purchased, in a different form than the form in which it was purchased, or as a component part of a manufactured product. This section shall apply to the purchase and/or sale of personal property, whether or not such property was purchased and/or sold in the ordinary course of trade or business, except that income derived in connection with the sale of tangible personal property will not be considered to be foreign base company sales income if such property is sold to a person that is not a related person, as defined in § 1.954–1(f), after substantial use has been made of the property by the controlled foreign corporation in its trade or business. This section shall not apply to the excess of gains over losses from sales or exchanges of securities or from futures transactions, to the extent such excess gains are includible in foreign personal holding company income of the controlled foreign corporation under § 1.954–2; nor shall it apply to the sale of the controlled foreign corporation's property (other than its stock in trade or other property of a kind which would properly be included in its inventory if on hand at the close of the taxable year, or property held primarily for sale to customers in the ordinary course of its business) if substantially all the property of such corporation is sold pursuant to the discontinuation of the trade or business previously carried on by such corporation. The term ''any person'' as used in this paragraph (a)(1)(i) includes a related person as defined in § 1.954–1(f).

* * * * *

(iii) * * *

Example 1. Controlled foreign corporation A, incorporated under the laws of foreign country X, is a wholly owned subsidiary of domestic corporation M. Corporation A purchases from M Corporation, a related person, articles manufactured in the United States and sells the articles to P, an unrelated person, for delivery and use in foreign country Y. Gross income of A Corporation derived from the purchase and sale of the personal property is foreign base company sales income.

Example 2. Corporation A in *Example 1* also purchases from P, an unrelated person, articles manufactured in country Y and sells the articles to foreign corporation B, a related person, for use in foreign country Z. Gross income of A Corporation derived from the purchase and sale of the personal property is foreign base company sales income.

* * * * *

(2) *Property manufactured, produced, constructed, grown, or extracted within the country in which the controlled foreign corporation is created or organized.* Foreign base company sales income does not include income derived in connection with the purchase and sale of personal property (or purchase or sale of personal property on behalf of a related person) in a transaction described in paragraph (a)(1) of this section if the property is manufactured, produced, constructed, grown, or extracted in the country under the laws of which the controlled foreign corporation which purchases and sells the property (or acts on behalf of a related person) is created or organized. See section 954(d)(1)(A). The principles set forth in paragraphs (a)(4)(ii) and (a)(4)(iii) of this section apply under this paragraph (a)(2) in determining what constitutes the manufacture, production, or construction of personal property, excluding the requirement set forth in paragraph (a)(4)(i) of this section that the provisions of paragraphs (a)(4)(ii) and (a)(4)(iii) of this section may only be satisfied through the activities of employees of the corporation manufacturing, producing, or constructing the personal property. The principles of paragraph (a)(4)(iv) of this section apply under this paragraph (a)(2) in determining what constitutes the manufacture, production, or construction of personal property but only when the personal property is manufactured, produced, or constructed by a person related to the controlled foreign corporation within the meaning of § 1.954–1(f). The application of this paragraph (a)(2) may be illustrated by the following examples:

* * * * *

(4) *Property manufactured, produced, or constructed by the controlled foreign corporation*—(i) *In general.* Foreign base company sales income does not include income of a controlled foreign corporation derived in connection with the sale of personal property manufactured, produced, or constructed by such corporation. A controlled foreign corporation will have manufactured, produced, or constructed personal property which the corporation sells only if such corporation satisfies the provisions of paragraph (a)(4)(ii), (a)(4)(iii), or (a)(4)(iv) of this section through the activities of its employees (as defined in § 31.3121(d)–1(c) of this chapter) with respect to such property.

A controlled foreign corporation will not be treated as having manufactured, produced, or constructed personal property which the corporation sells merely because the property is sold in a different form than the form in which it was purchased. For rules of apportionment in determining foreign base company sales income derived from the sale of personal property purchased and used as a component part of property which is not manufactured, produced, or constructed, see paragraph (a)(5) of this section.

(ii) *Substantial transformation of property.* If personal property purchased by a foreign corporation is substantially transformed by such foreign corporation prior to sale, the property sold by the selling corporation is manufactured, produced, or constructed by such selling corporation. The application of this paragraph (a)(4)(ii) may be illustrated by the following examples:

* * * * *

(iii) *Manufacture of a product when purchased components constitute part of the property sold.* If purchased property is used as a component part of personal property which is sold, the sale of the property will be treated as the sale of a manufactured product, rather than the sale of component parts, if the assembly or conversion of the component parts into the final product by the selling corporation involves activities that are substantial in nature and generally considered to constitute the manufacture, production, or construction of property. Without limiting this substantive test, which is dependent on the facts and circumstances of each case, the operations of the selling corporation in connection with the use of the purchased property as a component part of the personal property which is sold will be considered to constitute the manufacture of a product if in connection with such property conversion costs (direct labor and factory burden) of such corporation account for 20 percent or more of the total cost of goods sold. In no event, however, will packaging, repackaging, labeling, or minor assembly operations constitute the manufacture, production, or construction of property for purposes of section 954(d)(1). The application of this paragraph (a)(4)(iii) may be illustrated by the following examples:

* * * * *

(iv) *Substantial contribution to manufacturing of personal property*—(*a*) *In general.* If an item of personal property would be considered manufactured, produced, or constructed (under the principles of paragraph (a)(4)(ii) or (a)(4)(iii) of this section) prior to sale by the controlled foreign corporation had all of the manufacturing, producing, and constructing activities undertaken with respect to that property prior to sale been undertaken by the controlled foreign corporation through the activities of its employees, then this paragraph (a)(4)(iv) applies. If this paragraph (a)(4)(iv) applies and if the facts and circumstances evince that the controlled foreign corporation makes a substantial contribution through the activities of its employees to the manufacture, production, or construction of the personal property sold, then the personal property sold by the controlled foreign corporation is manufactured, produced, or constructed by such controlled foreign corporation.

(*b*) *Activities.* The determination of whether a controlled foreign corporation makes a substantial contribution through the activities of its employees to the manufacture, production, or construction of the personal property sold involves, but will not necessarily be limited to, consideration of the following activities:

(*1*) Oversight and direction of the activities or process pursuant to which the property is manufactured, produced, or constructed (under the principles of paragraph (a)(4)(ii) or (a)(4)(iii) of this section).

(*2*) Activities that are considered in, but that are insufficient to satisfy, the tests provided in paragraphs (a)(4)(ii) and (a)(4)(iii) of this section.

(*3*) Material selection, vendor selection, or control of the raw materials, work-in-process or finished goods.

(*4*) Management of manufacturing costs or capacities (for example, managing the risk of loss, cost reduction or efficiency initiatives associated with the manufacturing process, demand planning, production scheduling, or hedging raw material costs).

(*5*) Control of manufacturing related logistics.

(*6*) Quality control (for example, sample testing or establishment of quality control standards).

(*7*) Developing, or directing the use or development of, product design and design specifications, as well as trade secrets, technology, or other intellectual property for the purpose of manufacturing, producing, or constructing the personal property.

(*c*) *Application of substantial contribution test.* When considering whether a controlled foreign corporation makes a substantial contribution to the manufacture, production, or construction of the personal property, the performance of any activity in paragraph (a)(4)(iv)(*b*) of this section will be taken into account. The performance or lack of performance of any particular activity in paragraph (a)(4)(iv)(*b*) of this section, or of a particular number of activities in (a)(4)(iv)(*b*) of this section, is not determinative. The weight accorded to the performance of any quantum of any activity (whether or not specified in paragraph (a)(4)(iv)(*b*) of this section) will vary with the facts and circumstances of the particular business. See paragraph (a)(4)(iv)(*d*) *Examples 8, 10* and *11* of this section. In determining whether the activities of the controlled foreign corporation constitute a substantial contribution, there is no minimum performance threshold before an activity can be considered. The fact that other persons make a substantial contribution to the manufacture, production, or construction of the personal property prior to sale does not preclude the controlled foreign corporation from making a substantial contribution to the manufacture, construction, or production of that property through the activities of its employees. See paragraph (a)(4)(iv)(*d*) *Example 9* of this section.

(*d*) *Examples.* The rules of this paragraph (a)(4)(iv) are illustrated by the following examples:

Example 1. No substantial contribution to manufacturing. (i) *Facts.* FS, a controlled foreign corporation, purchases raw materials from a related person. The raw materials are manufactured (under the principles of paragraph (a)(4)(ii) or (a)(4)(iii) of this section) into Product X by CM, an unrelated corporation, pursuant to a contract manufacturing arrangement. CM physically performs the substantial transformation, assembly, or conversion outside of FS's country of organization. Product X is sold by FS for use outside of FS's country of organization. Under the terms of the contract, FS retains the right to control the raw materials, work-in-process, and finished goods, and the right to oversee and direct the activities or process pursuant to which Product X is manufactured by CM. FS owns the intellectual property used in the manufacturing process. However, FS does not exercise, through its employees, its powers to control the raw materials, work-in-process, or finished goods, and FS does not exercise its powers of oversight and direction. Likewise, FS does not, through its employees, develop or direct the use or development of the intellectual property for the purpose of manufacturing Product X.

(ii) *Result.* If the manufacturing activities undertaken with respect to Product X prior to sale were undertaken by FS through the activities of its employees, FS would have satisfied the manufacturing exception contained in paragraph (a)(4)(ii) or (a)(4)(iii)

of this section with respect to Product X. Therefore, this paragraph (a)(4)(iv) applies. FS does not satisfy the test under this paragraph (a)(4)(iv) because it does not make a substantial contribution through the activities of its employees to the manufacture of Product X. Mere contractual rights to control materials, contractual rights to oversee and direct the manufacturing activities or process pursuant to which the property is manufactured, and ownership of intellectual property are not sufficient to satisfy this paragraph (a)(4)(iv). Therefore, under the facts and circumstances of the business, FS is not considered to have manufactured Product X under paragraph (a)(4)(i) of this section.

Example 2. Substantial contribution to manufacturing. (i) *Facts.* Assume the same facts as in *Example 1*, except for the following. FS, through its employees, engages in product design and quality control and controls manufacturing related logistics. Employees of FS exercise the right to oversee and direct the activities of CM in the manufacture of Product X.

(ii) *Result.* If the manufacturing activities undertaken with respect to Product X prior to sale were undertaken by FS through the activities of its employees, FS would have satisfied the manufacturing exception contained in paragraph (a)(4)(ii) or (a)(4)(iii) of this section with respect to Product X. Therefore, this paragraph (a)(4)(iv) applies. Under the facts and circumstances of the business, FS satisfies the test under this paragraph (a)(4)(iv) because it makes a substantial contribution through the activities of its employees to the manufacture of Product X. Therefore, FS is considered to have manufactured Product X under paragraph (a)(4)(i) of this section. The analysis and conclusion would be the same if CM were related to FS because the relationship between CM and FS is irrelevant for purposes of applying paragraph (a)(4) of this section.

Example 3. Raw materials procured by contract manufacturer. (i) *Facts.* FS, a controlled foreign corporation, enters into a contract with CM to manufacture (under the principles of paragraph (a)(4)(ii) or (a)(4)(iii) of this section) Product X. CM physically performs the substantial transformation, assembly, or conversion required to manufacture Product X outside of FS's country of organization. Product X is sold by FS for use outside of FS's country of organization. Employees of FS select the materials that will be used to manufacture Product X. FS does not own the materials or work-in-process during the manufacturing process. FS, through its employees, exercises oversight and direction of the manufacturing process and provides quality control. FS manages the manufacturing costs and capacities with respect to Product X by managing the risk of loss and engaging in demand planning and production scheduling.

(ii) *Result.* If the manufacturing activities undertaken with respect to Product X prior to sale were undertaken by FS through the activities of its employees, FS would have satisfied the manufacturing exception contained in paragraph (a)(4)(ii) or (a)(4)(iii) of this section with respect to Product X. Therefore, this paragraph (a)(4)(iv) applies. Under the facts and circumstances of the business, FS satisfies the test under this paragraph (a)(4)(iv) because it makes a substantial contribution through the activities of its employees to the manufacture of Product X. Therefore, FS is considered to have manufactured Product X under paragraph (a)(4)(i) of this section.

Example 4. Physical conversion by employees of a person other than the contract manufacturer. (i) *Facts.* FS, a controlled foreign corporation organized in Country M, purchases raw materials from a related person. The raw materials are manufactured (under the principles of paragraph (a)(4)(ii) or (a)(4)(iii) of this section) into Product X by CM, an unrelated corporation, pursuant to a contract manufacturing arrangement. CM physically performs the substantial transformation, assembly, or conversion required to manufacture Product X outside of FS's country of organization. Product X is sold by FS for use outside of FS's country of organization. CM contracts with another corporation for its employees in order to operate CM's manufacturing plant and transform, assemble, or convert the raw materials into Product X. Apart from the physical performance of the substantial transformation, assembly, or conversion of the raw materials into Product X, employees of FS perform all of the other manufacturing activities required in connection with the manufacture of Product X (for example, oversight and direction of the manufacturing process; vendor selection; control of raw materials, work-in-process, and finished goods; control of manufacturing related logistics; and quality control).

(ii) *Result.* If the manufacturing activities undertaken with respect to Product X prior to sale were undertaken by FS through the activities of its employees, FS would have satisfied the manufacturing exception contained in paragraph (a)(4)(ii) or (a)(4)(iii) of this section with respect to Product X. Therefore, this paragraph (a)(4)(iv) applies. Under the facts and circumstances of the business, FS satisfies the test under this paragraph (a)(4)(iv) because it makes a substantial contribution through the activities of its employees to the manufacture of Product X. Therefore, FS is considered to have manufactured Product X under paragraph (a)(4)(i) of this section.

Example 5. Automated manufacturing supervised by another person. (i) *Facts.* FS, a controlled foreign corporation, purchases raw materials from a related person. The raw materials are manufactured (under the principles of paragraph (a)(4)(ii) or (a)(4)(iii) of this section) into Product X by CM, an unrelated corporation selected by FS, pursuant to a contract manufacturing arrangement. CM physically performs the substantial transformation, assembly, or conversion outside of FS's country of organization. Product X is sold by FS to related and unrelated persons for use outside of FS's country of organization. At all times, FS retains ownership of the raw materials, work-in-process, and finished goods. FS retains the right to oversee and direct the activities or process pursuant to which Product X is manufactured by CM, but does not exercise, through its employees, its powers of oversight and direction. FS is the owner of sophisticated software and network systems that remotely and automatically (without human involvement) take orders, route them to CM, order raw materials, and perform quality control. FS has a small number of computer technicians who monitor the software and network systems to ensure that they are running smoothly and apply any necessary patches or fixes. The software and network systems were developed by employees of DP, the U.S. corporate parent of FS. DP's employees supervise the computer technicians, evaluate the results of the automated manufacturing business, and make ongoing operational decisions, including decisions related to acceptable performance of the manufacturing process, stoppages of that process, and decisions related to product and manufacturing process design. DP's employees develop and provide to FS all of the upgrades to the software and network systems. DP also has employees who direct and control other aspects of the manufacturing process such as vendor and material selection, management of the manufacturing costs and capacities, and the selection of CM. The need for DP's employees to direct the activities of the FS employees and otherwise contribute to the manufacturing process evinces that substantial operational responsibilities and decision making are required to be exercised by parties other than CM in order to manufacture Product X.

(ii) *Result.* If the manufacturing activities undertaken with respect to Product X prior to sale were undertaken by FS through the activities of its employees, FS would have satisfied the manufacturing exception contained in paragraph (a)(4)(ii) or (a)(4)(iii) of this section with respect to Product X. Therefore, this paragraph (a)(4)(iv) applies. Under the facts and circumstance of the business, FS does not satisfy the test under this paragraph (a)(4)(iv) because it does not make a substantial contribution through the activities of its employees to the manufacture of Product X. Mere ownership of materials and intellectual property along with contractual rights to exercise powers of direction and control are not sufficient to satisfy this paragraph (a)(4)(iv). The employees of FS do not perform the amount of activity necessary to constitute a substantial contribution. FS is not considered to have manufactured Product X under paragraph (a)(4)(i) of this section.

Example 6. Automated manufacturing supervised by FS. (i) *Facts.* Assume the same facts as in *Example 5*, except for the following. FS, through its employees, engages in the activities undertaken by DP's employees in *Example 5.* DP's employees also contribute to product and manufacturing process design, and provide support and oversight to FS in connection with functions performed by FS through its employees.

(ii) *Result.* If the manufacturing activities undertaken with respect to Product X prior to sale were undertaken by FS through the activities of its employees, FS would have

satisfied the manufacturing exception contained in paragraph (a)(4)(ii) or (a)(4)(iii) of this section with respect to Product X. Therefore, this paragraph (a)(4)(iv) applies. Under the facts and circumstances of the business, FS satisfies the test under this paragraph (a)(4)(iv) because it makes a substantial contribution through the activities of its employees to the manufacture of Product X. This determination does not require a comparison between the activities of FS and the activities of DP. Selection of the contract manufacturer, even though not specifically identified in paragraph (a)(4)(iv)(*b*) of this section, is considered under paragraph (a)(4)(iv)(*c*) of this section in determining whether FS makes a substantial contribution to the manufacture of Product X through its employees. FS is considered to have manufactured Product X under paragraph (a)(4)(i) of this section.

Example 7. Automated manufacturing supervised by FS with purchased intellectual property. (i) *Facts.* Assume the same facts as in *Example 6,* except for the following. The software and network systems, and the upgrades to those systems, were purchased by FS rather than developed by employees of FS.

(ii) *Result.* If the manufacturing activities undertaken with respect to Product X prior to sale were undertaken by FS through the activities of its employees, FS would have satisfied the manufacturing exception contained in paragraph (a)(4)(ii) or (a)(4)(iii) of this section with respect to Product X. Therefore, this paragraph (a)(4)(iv) applies. The lack of performance of software and network system development activities is not determinative under the facts and circumstances of the business. Therefore, FS satisfies the test under this paragraph (a)(4)(iv) because it makes a substantial contribution through the activities of its employees to the manufacture of Product X. This determination does not require a comparison between the activities of FS and the activities of DP. FS is considered to have manufactured Product X under paragraph (a)(4)(i) of this section.

Example 8. Manufacture without intellectual property. (i) *Facts.* FS, a controlled foreign corporation, purchases raw materials from a related person. The raw materials are manufactured (under the principles of paragraph (a)(4)(ii) or (a)(4)(iii) of this section) into Product X by CM, an unrelated corporation, pursuant to a contract manufacturing arrangement. CM physically performs the substantial transformation, assembly, or conversion outside of FS's country of organization. Product X is sold by FS for use outside of FS's country of organization. At all times, FS controls the raw materials, work-in-process, and finished goods. FS controls the manufacturing related logistics, manages the manufacturing costs and capacities, and provides quality control with respect to CM's manufacturing process and product. No intellectual property of significant value is required to manufacture Product X. FS does not own any intellectual property underlying Product X, or hold an exclusive or non-exclusive right to manufacture Product X.

(ii) *Result.* If the manufacturing activities undertaken with respect to Product X prior to sale were undertaken by FS through the activities of its employees, FS would have satisfied the manufacturing exception contained in paragraph (a)(4)(ii) or (a)(4)(iii) of this section with respect to Product X. Therefore, this paragraph (a)(4)(iv) applies. Because use of intellectual property plays little or no role in the manufacture of Product X, it is irrelevant to the substantial contribution analysis under paragraph (a)(4)(iv) of this section. Under the facts and circumstances of the business, FS satisfies the test under this paragraph (a)(4)(iv) because it makes a substantial contribution through the activities of its employees to the manufacture of Product X. Therefore, FS is considered to have manufactured Product X under paragraph (a)(4)(i) of this section.

Example 9. Substantial contribution by more than one CFC. (i) *Facts.* FS1 and FS2, unrelated controlled foreign corporations, contract with CM, an unrelated corporation, to manufacture (under the principles of paragraph (a)(4)(ii) or (a)(4)(iii) of this section) Product X. CM physically performs the substantial transformation, assembly, or conversion required to manufacture Product X outside of FS1's and FS2's respective countries of organization. Neither FS1 nor FS2 owns the materials or work-in-process during the manufacturing process. Product X is sold by FS1 and FS2 to persons related to FS1 and FS2, respectively, for disposition outside of FS1's and FS2's respective countries of organization. FS1, through its employees, designs Product X. FS1 directs the use of the product design and design specifications, and other intellectual property, for the purpose of manufacturing Product X. Employees of FS1 also select the materials that will be used to manufacture Product X, and the vendors that provide those materials. FS2, through its employees, designs the process for manufacturing Product X. FS2, through its employees, manages the manufacturing costs and capacities with respect to Product X. FS1 and FS2 each provide quality control and oversight and direction of CM's manufacturing activities with respect to different aspects of the manufacture of Product X.

(ii) *Result.* If the manufacturing activities undertaken with respect to Product X prior to sale were undertaken by FS1 or FS2 through the activities of their employees, FS1 or FS2 would have satisfied the manufacturing exception contained in paragraph (a)(4)(ii) or (a)(4)(iii) of this section with respect to Product X. Therefore, this paragraph (a)(4)(iv) applies. The fact that other persons make a substantial contribution to the manufacture of personal property does not preclude a controlled foreign corporation from making a substantial contribution to the manufacture of personal property through the activities of its employees. In the analysis of whether FS1 or FS2 make a substantial contribution to the manufacture of Product X, each company takes into account its individual activities, including those of providing quality control and oversight and direction of the manufacture of Product X. In addition, no threshold level of activity is required, including with respect to providing quality control or oversight and direction of the activities or process pursuant to which Product X is manufactured, before FS1 and FS2 can take into account their respective activities. Under the facts and circumstances of the business, both FS1 and FS2 satisfy the test under this paragraph (a)(4)(iv) because each independently makes a substantial contribution through the activities of its employees to the manufacture of Product X. Therefore, FS1 and FS2 are each considered to have manufactured Product X under paragraph (a)(4)(i) of this section.

Example 10. Manufacture of products designed by CFC. (i) *Facts.* FS, a controlled foreign corporation, purchases raw materials from a related person. The raw materials are manufactured (under the principles of paragraph (a)(4)(ii) or (a)(4)(iii) of this section) into Product X by CM, an unrelated corporation, pursuant to a contract manufacturing arrangement. CM physically performs the substantial transformation, assembly, or conversion outside of FS's country of organization. Product X is sold by FS for use outside of FS's country of organization. Products in the X industry are distinguished (and vary widely in value) based on the raw materials used to make the product and the product design. FS designs the product and selects the materials that CM will use to manufacture Product X. FS also manages the manufacturing costs and capacities. Product X can be manufactured from the raw materials to FS's design specifications without significant oversight and direction, quality control, or control of manufacturing related logistics. The activities most relevant to the substantial contribution analysis under these facts are material selection, product design and management of the manufacturing costs and capacities.

(ii) *Result.* If the manufacturing activities undertaken with respect to Product X prior to sale were undertaken by FS through the activities of its employees, FS would have satisfied the manufacturing exception contained in paragraph (a)(4)(ii) or (a)(4)(iii) of this section with respect to Product X. Therefore, this paragraph (a)(4)(iv) applies. Under the facts and circumstances of the business, FS makes a substantial contribution through the activities of its employees to the manufacture of Product X. FS satisfies the test under this paragraph (a)(4)(iv) because it makes a substantial contribution through the activities of its employees to the manufacture of Product X. Therefore, FS is considered to have manufactured Product X under paragraph (a)(4)(i) of this section.

Example 11. Direction and oversight of manufacturing and quality control through periodic visits. (i) *Facts.* FS, a controlled foreign corporation, purchases raw materials from a related person. The raw materials are manufactured (under the principles of paragraph (a)(4)(ii) or (a)(4)(iii) of this section) into Product X by CM, an unrelated corporation, pursuant to a contract manufacturing arrangement. CM physically performs the substantial transformation, assembly, or conversion outside of FS's country of organization. Product X is sold by FS for use outside of FS's country of organization. FS controls the raw material, work-in-process, and finished goods, manages the manufacturing costs and

capacities, and provides oversight and direction of the manufacture of Product X. Employees of FS visit CM's manufacturing facility for one week each quarter and perform quality control tests on a random sample of the units of Product X produced during the week. In the X industry, quarterly visits to a manufacturing facility by qualified persons are sufficient to control the quality of manufacturing.

(ii) *Result.* If the manufacturing activities undertaken with respect to Product X prior to sale were undertaken by FS through the activities of its employees, FS would have satisfied the manufacturing exception contained in paragraph (a)(4)(ii) or (a)(4)(iii) of this section with respect to Product X. Therefore, this paragraph (a)(4)(iv) applies. Under the facts and circumstances of the business, FS satisfies the test under this paragraph (a)(4)(iv) with respect to Product X because it makes a substantial contribution through the activities of its employees to the manufacture of Product X. Therefore, FS is considered to have manufactured Product X under paragraph (a)(4)(i) of this section.

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(6) *Special rule applicable to distributive share of partnership income*—(i) *In general.* To determine the extent to which a controlled foreign corporation's distributive share of any item of gross income of a partnership would have been foreign base company sales income if received by it directly, under § 1.952–1(g), the property sold will be considered to be manufactured, produced, or constructed by the controlled foreign corporation, within the meaning of paragraph (a)(4)(i) of this section, only if the manufacturing exception of paragraph (a)(4)(i) of this section would have applied to exclude the income from foreign base company sales income if the controlled foreign corporation had earned the income directly, determined by taking into account only the activities of the employees of, and property owned by, the partnership.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(*c*) [Reserved]. For further guidance, see § 1.954–3T(b)(1)(i)(*c*).

(ii) * * *

(*a*) [Reserved]. For further guidance, see § 1.954–3T(b)(1)(ii)(*a*).

* * * * *

(*c*) [Reserved]. For further guidance, see § 1.954–3T(b)(1)(ii)(*c*).

(2) * * *

(i) * * *

(*b*) [Reserved]. For further guidance, see § 1.954–3T(b)(2)(i)(*b*).

* * * * *

(*d*) [Reserved]. For further guidance, see § 1.954–3T(b)(2)(i)(*d*).

* * * * *

(ii) * * *

(*a*) [Reserved]. For further guidance, see § 1.954–3T(b)(2)(ii)(*a*).

(*b*) [Reserved]. For further guidance, see § 1.954–3T(b)(2)(ii)(*b*).

* * * * *

(*e*) [Reserved]. For further guidance, see § 1.954–3T(b)(2)(ii)(*e*).

* * * * *

(4) * * *

Example (3). [Reserved]. For further guidance, see § 1.954–3T(b)(4) *Example (3).*

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(c) *Effective/applicability date.* Paragraphs (a)(1)(i), (a)(1)(iii) *Example 1,* (a)(1)(iii) *Example 2,* (a)(2), (a)(4)(i), (a)(4)(ii), (a)(4)(iii), (a)(4)(iv) and (a)(6)(i) shall apply to taxable years of controlled foreign corporations beginning after June 30, 2009, and for taxable years of United States shareholders in which or with which such taxable years of the controlled foreign corporations end.

(d) *Application of regulations to earlier taxable years.* A taxpayer may choose to apply these regulations and the regulations under § 1.954–3T retroactively with respect to its open taxable years. The taxpayer may so choose if and only if the taxpayer and all members of the taxpayer's affiliated group (within the meaning of § 1504(a)) apply both these regulations and the regulations under § 1.954–3T, in their entirety, to the earliest taxable year of each controlled foreign corporation that ends with or within an open taxable year of the taxpayer and to all subsequent taxable years of the taxpayer.

■ **Par. 3.** Section 1.954–3T is added to read as follows:

§ 1.954–3T Foreign base company sales income (temporary).

(a) Through (b)(1)(i)(*b*) [Reserved]. For further guidance, see § 1.954–3(a) through (b)(1)(i)(*b*).

(*c*) *Use of more than one branch.* If a controlled foreign corporation carries on purchasing or selling activities by or through more than one branch or similar establishment located outside the country under the laws of which such corporation is created or organized, then § 1.954–3(b)(1)(i)(*b*) shall be applied separately to the income derived by each such branch or similar establishment (by treating such purchasing or selling branch or similar establishment as if it were the only branch or similar establishment of the controlled foreign corporation and as if any such other branches or similar establishments were separate corporations) in determining whether the use of such branch or similar establishment has substantially the same tax effect as if such branch or similar establishment were a wholly owned subsidiary corporation of the controlled foreign corporation. See paragraph (b)(1)(ii)(*c*)(*1*) of this section for rules applicable to a controlled foreign corporation that carries on purchase or sales activities by or through one or more branches or similar establishments in addition to carrying on manufacturing activities by or through one or more branches or similar establishments.

(ii) *Manufacturing branch*—(*a*) *In general.* If a controlled foreign corporation carries on manufacturing, producing, constructing, growing, or extracting activities by or through a branch or similar establishment located outside the country under the laws of which such corporation is created or organized and the use of the branch or similar establishment for such activities with respect to personal property purchased or sold by or through the remainder of the controlled foreign corporation has substantially the same tax effect as if the branch or similar establishment were a wholly owned subsidiary corporation of such controlled foreign corporation, the branch or similar establishment and the remainder of the controlled foreign corporation will be treated as separate corporations for purposes of determining foreign base company sales income of such corporation. See section 954(d)(2). The provisions of this paragraph (b)(1)(ii) and § 1.954–3(b)(1)(ii)(*b*) will apply only if the controlled foreign corporation (including any branches or similar establishments of such controlled foreign corporation) manufactures, produces, or constructs such personal property within the meaning of § 1.954–3(a)(4)(i), or carries on growing or extracting activities with respect to such personal property.

(*b*) [Reserved]. For further guidance, see § 1.954–3(b)(1)(ii)(*b*).

(*c*) *Use of more than one branch—(1) Use of one or more sales or purchase branches in addition to a manufacturing branch.* If, with respect to personal property manufactured, produced, constructed, grown, or extracted by or through a branch or similar establishment located outside the country under the laws of which the controlled foreign corporation is created or organized, purchasing or selling activities are carried on by or through more than one branch or similar establishment, or by or through one or more branches or similar establishments located outside such country, of such corporation, then § 1.954–3(b)(1)(ii)(*b*)

shall be applied separately to the income derived by each such purchasing or selling branch or similar establishment (by treating such purchasing or selling branch or similar establishment as though it alone were the remainder of the controlled foreign corporation) for purposes of determining whether the use of such manufacturing, producing, constructing, growing, or extracting branch or similar establishment has substantially the same tax effect as if such branch or similar establishment were a wholly owned subsidiary corporation of the controlled foreign corporation. If this rule applies, the sales or purchase branch rules contained in paragraph (b)(1)(i)(*c*) of this section and § 1.954–3(b)(1)(i) do not apply. The application of this paragraph (b)(1)(ii)(*c*)(*1*) is illustrated by the following example:

Example. All activities of controlled foreign corporation conducted through sales branches and manufacturing branch. (i) *Facts.* FS, a controlled foreign corporation organized under the laws of country M, operates three branches. Branch A, located in country A, manufactures Product X under the principles of § 1.954–3(a)(4)(i). Branch B, located in Country B, sells Product X manufactured by Branch A to customers for use outside of Country B. Branch C, located in Country C sells Product X manufactured by Branch A to customers for use outside of Country C. FS does not conduct any manufacturing or selling activities apart from the activities of Branches A, B and C. Country M imposes an effective rate of tax on sales income of 0%. Country A imposes an effective rate of tax on sales income of 20%. Country B imposes an effective rate of tax on sales income of 20%. Country C imposes an effective rate of tax on sales income of 18%.

(ii) *Result.* Pursuant to this paragraph (b)(1)(ii)(*c*)(*1*), § 1.954–3(b)(1)(ii)(*b*) is applied to the sales income derived by Branch B by treating Branch B as though it alone were the remainder of the controlled foreign corporation. The use of Branch B does not have the same tax effect as if Branch B were a wholly owned subsidiary of FS because the tax rate applicable to the income allocated to Branch B under § 1.954–3(b)(1)(ii)(*b*) (20%) is not less than 90 percent of, and at least 5 percentage points less than, the effective rate of tax which would apply to such income under the laws of Country A (20%), the country in which Branch A is located. Section 1.954–3(b)(1)(ii)(*b*) is applied separately to the sales income derived by Branch C by treating Branch C as though it alone were the remainder of the controlled foreign corporation. The use of Branch C does not have the same tax effect as if Branch C were a wholly owned subsidiary of FS because the tax rate applicable to the income allocated to Branch C under § 1.954–3(b)(1)(ii)(*b*) (18%) is not less than 90 percent of, and at least 5 percentage points less than, the effective rate of tax which would apply to such income under the laws of Country A (20%), the country in which Branch A is located. Pursuant to this paragraph (b)(1)(ii)(*c*)(*1*), the rules under paragraph (b)(1)(i)(*c*) of this section and § 1.954–3(b)(1)(i) for determining whether a sales or purchase branch is treated as a separate corporation from the remainder of the controlled foreign corporation do not apply.

(*2*) *Use of more than one branch to manufacture, produce, construct, grow, or extract separate items of personal property.* If a controlled foreign corporation carries on manufacturing, producing, constructing, growing, or extracting activities with respect to separate items of personal property by or through more than one branch or similar establishment located outside the country under the laws of which such corporation is created or organized, then paragraph (b)(1)(ii)(*c*) of this section and § 1.954–3(b)(1)(ii)(*b*) will be applied separately to each such branch or similar establishment (by treating such manufacturing branch or similar establishment as if it were the only such branch or similar establishment of the controlled foreign corporation and as if any other such branches or similar establishments were separate corporations) for purposes of determining whether the use of such branch or similar establishment has substantially the same tax effect as if such branch or similar establishment were a wholly owned subsidiary corporation of the controlled foreign corporation. The application of this paragraph (b)(1)(ii)(*c*)(*2*) is illustrated by the following example:

Example. Multiple branches that satisfy § 1.954–3(a)(4)(i). (i) *Facts.* FS is a controlled foreign corporation organized in Country M. FS operates two branches, Branch A and Branch B located in Country A and Country B, respectively. Branch A and Branch B each manufacture separate items of personal property (Product X and Product Y, respectively) within the meaning of § 1.954–3(a)(4)(ii) or (iii). Raw materials used in the manufacture of Product X and Product Y are purchased by FS from an unrelated person. FS engages in activities in Country M to sell Product X and Product Y to a related person for use, disposition or consumption outside of Country M. Employees of FS located in Country M perform only sales functions. The effective rate imposed in Country M on the income from the sales of Product X and Product Y is 10%. Country A imposes an effective rate of tax on sales income of 20%. Country B imposes an effective rate of tax on sales income of 12%.

(ii) *Result.* Pursuant to this paragraph (b)(1)(ii)(*c*)(*2*), § 1.954–3(b)(1)(ii)(*b*) is applied separately to Branch A and Branch B with respect to the sales income of FS attributable to Product X (manufactured by Branch A) and Product Y (manufactured by Branch B). Because the effective rate of tax on FS's sales income from the sale of Product X in Country M (10%) is less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in the country in which Branch A is located (20%), the use of Branch A to manufacture Product X has substantially the same tax effect as if Branch A were a wholly owned subsidiary corporation of FS. Because the effective rate of tax on FS's sales income from the sale of Product Y in Country M (10%) is not less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in the country in which Branch B is located (12%), the use of Branch B to manufacture Product Y does not have substantially the same tax effect as if Branch B were a wholly owned subsidiary corporation of FS. Consequently, only Branch A is treated as a separate corporation apart from the remainder of FS for purposes of determining foreign base company sales income from the sales of Product X.

(*3*) *Use of more than one manufacturing branch, or one or more manufacturing branches and the remainder of the controlled foreign corporation, to manufacture, produce, or construct the same item of personal property*—(*i*) *In general.* This paragraph (b)(1)(ii)(*c*)(*3*) applies to determine the location of manufacture, production, or construction of personal property for purposes of applying § 1.954–3(b)(1)(i)(*b*) or (b)(1)(ii)(*b*) where more than one branch (or similar establishment) of a controlled foreign corporation, or one or more branches (or similar establishments) of a controlled foreign corporation and the remainder of the controlled foreign corporation, each engage in manufacturing, producing, or constructing activities with respect to the same item of personal property which is then sold by the controlled foreign corporation. The location of manufacture, production, or construction is determined under paragraph (b)(1)(ii)(*c*)(*3*)(*ii*) of this section if one or more branches (or similar establishments), or the remainder of the controlled foreign corporation, independently satisfies § 1.954–3(a)(4)(i) with respect to an item of personal property. The location of manufacture, production, or construction is determined under paragraph (b)(1)(ii)(*c*)(*3*)(*iii*) of this section if none of the branches (or similar establishments), or the remainder of the controlled foreign corporation, independently satisfies § 1.954–3(a)(4)(i) with respect to an item of personal property, but the controlled foreign corporation as a whole makes a substantial contribution to the manufacture, production or construction of that property within the meaning of § 1.954–3(a)(4)(iv). For purposes of this paragraph (b)(1)(ii)(*c*)(*3*), the location of any activity with respect to the manufacture, production, or construction of an item

of personal property is determined under paragraph (b)(1)(ii)(*c*)(*3*)(*iv*) of this section. For purposes of this paragraph (b)(1)(ii)(*c*)(*3*), if multiple branches (or similar establishments) are located in a single jurisdiction, then the activities of those branches will be aggregated for purposes of determining whether a branch or remainder of the controlled foreign corporation satisfies § 1.954–3(a)(4)(i).

(*ii*) *Manufacture, production, or construction in one or more locations.* If only one branch (or similar establishment), or only the remainder of a controlled foreign corporation, independently satisfies § 1.954–3(a)(4)(i) with respect to an item of personal property, then that branch (or similar establishment) or the remainder of the controlled foreign corporation will be the location of manufacture, production, or construction of that property for purposes of applying § 1.954–3(b)(1)(i)(*b*) or (b)(1)(ii)(*b*) to the income from the sale of that property. See paragraph (b)(1)(ii)(*c*)(*3*)(*v*) *Example 1* of this section. If more than one branch (or similar establishment), or one or more branches (or similar establishments) and the remainder of the controlled foreign corporation, each independently satisfy § 1.954–3(a)(4)(i) with respect to an item of personal property, then the location of manufacture, production, or construction of that property for purposes of applying § 1.954–3(b)(1)(i)(*b*) or (b)(1)(ii)(*b*) will be the location of that branch (or similar establishment) or the jurisdiction under the laws of which the remainder of the controlled foreign corporation is organized that satisfies § 1.954–3(a)(4)(i) and that would, after applying § 1.954–3(b)(1)(ii)(*b*) to such branch (or similar establishment) or § 1.954–3(b)(1)(i)(*b*) to the remainder of the controlled foreign corporation, impose the lowest effective rate of tax on the income allocated to such branch or the remainder of the controlled foreign corporation under such section (that is, either § 1.954–3(b)(1)(i)(*b*) or (b)(1)(ii)(*b*)). See paragraph (b)(1)(ii)(*c*)(*3*)(*v*) *Example 2* of this section.

(*iii*) *No location independently satisfies manufacturing test.* If none of the branches (or similar establishments) or the remainder of the controlled foreign corporation independently satisfies § 1.954–3(a)(4)(i) with respect to an item of personal property but the controlled foreign corporation as a whole makes a substantial contribution to the manufacture, production, or construction of that property within the meaning of § 1.954–3(a)(4)(iv), then for purposes of applying § 1.954–3(b)(1)(i)(*b*) or (b)(1)(ii)(*b*), the location of manufacture, production, or construction with respect to that property will be the ''tested manufacturing location'' unless the ''tested sales location'' provides a demonstrably greater contribution to the manufacture, production, or construction of the property. The tested manufacturing location is the location of any branch (or similar establishment) or remainder of the controlled foreign corporation that contributes to the manufacture, production, or construction of the personal property, if any, and that would, after applying § 1.954–3(b)(1)(ii)(*b*) to such branch (or similar establishment) or § 1.954–3(b)(1)(i)(*b*) to the remainder of the controlled foreign corporation, be treated as a separate corporation and would impose the lowest effective rate of tax on the income allocated to such branch (or similar establishment) or to the remainder of the controlled foreign corporation under such section (that is, either § 1.954–3(b)(1)(ii)(*b*) or (b)(1)(i)(*b*)). The tested sales location is the location where the branch (or similar establishment) or the remainder of the controlled foreign corporation purchases or sells the personal property. For purposes of this paragraph (b)(1)(ii)(*c*)(*3*)(*iii*), the contribution to the manufacture, production, or construction of the personal property by the tested sales location will be deemed to include the activities of any branch (or similar establishment) or remainder of the controlled foreign corporation that would not be treated as a corporation separate from the tested sales location after the application of § 1.954–3(b)(1)(ii)(*b*) or (b)(1)(i)(*b*). For purposes of this paragraph (b)(1)(ii)(*c*)(*3*)(*iii*), the contribution of the tested manufacturing location to the manufacture, production, or construction of the personal property will be deemed to include any activities of any branch (or similar establishment) or remainder of the controlled foreign corporation that would be treated as a corporation separate from the tested sales location after the application of § 1.954–3(b)(1)(ii)(*b*) or (b)(1)(i)(*b*). Whether the tested sales location provides a demonstrably greater contribution to the manufacture, production, or construction of the personal property is determined by weighing the relative contributions to the manufacture, production, or construction of that property by the tested sales location and the tested manufacturing location under the facts and circumstances test provided in § 1.954–3(a)(4)(iv). See paragraph (b)(1)(ii)(*c*)(*3*)(*v*) *Examples 4, 5,* and *6* of this section. If the tested sales location provides a demonstrably greater contribution to the manufacture, production, or construction of the personal property than the tested manufacturing location or if there is no tested manufacturing location, then the tested sales location is the location of manufacture, production, or construction of that property and the rules of paragraph (b)(1)(ii)(*a*) of this section and § 1.954–3(b)(1)(i)(*a*) will not apply with respect to the sales income related to that property and the use of the purchasing or selling branch (or similar establishment) or the purchasing or selling remainder will not result in a branch being treated as a separate corporation for purposes of paragraph (b)(2)(ii) of this section or § 1.954–3(b)(2)(ii).

(*iv*) *Location of activity.* For purposes of paragraph (b)(1)(ii)(*c*)(*3*) of this section, the location of any activity with respect to the manufacture, production, or construction of an item of personal property is the location where the employees of the controlled foreign corporation perform such activity. For example, the location of any activity concerning intellectual property is determined based on where employees of the controlled foreign corporation develop, or direct the use or development of, the intellectual property, not on the formal assignment of that intellectual property.

(*v*) *Examples.* The following examples illustrate the application of this paragraph (b)(1)(ii)(*c*)(*3*):

Example 1. Multiple branches contribute to the manufacture of a single product, only one branch satisfies § 1.954–3(a)(4)(i). (i) *Facts.* FS is a controlled foreign corporation organized in Country M. FS operates three branches, Branch A, Branch B, and Branch C, located respectively in Country A, Country B, and Country C. Branch A, Branch B, and Branch C each performs different manufacturing activities with respect to the manufacture of Product X. Branch A, through the activities of employees of FS located in Country A, designs Product X. Branch B, through the activities of employees of FS located in Country B, provides quality control and oversight and direction. Branch C, through the activities of employees of FS located in Country C, manufactures Product X (within the meaning of § 1.954–3(a)(4)(ii) or (a)(4)(iii)) using the designs developed by Branch A and under the oversight of the quality control personnel of Branch B. The activities of Branch A and Branch B do not independently satisfy § 1.954–3(a)(4)(i). Employees of FS located in Country M purchase the raw materials used in the manufacture of Product X from a related person and control the work-in-process and finished goods throughout the manufacturing process. Employees of FS located in Country M also manage the manufacturing costs and

capacities related to Product X. Further, employees of FS located in Country M oversee the coordination between the branches. Employees of FS located in Country M sell Product X to unrelated persons for use outside of Country M. The sales income from the sale of Product X is taxed in Country M at an effective rate of tax of 10%. Country C imposes an effective rate of tax of 20% on sales income.

(ii) *Result.* Country C is the location of manufacture for purposes of applying § 1.954–3(b)(1)(ii)(*b*) because only the activities of Branch C independently satisfy § 1.954–3(a)(4)(i). The use of Branch C has substantially the same tax effect as if Branch C were a wholly owned subsidiary corporation of FS because the effective rate of tax on the sales income (10%) is less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in the country in which Branch C is located (20%). Therefore, sales of Product X by the remainder of FS are treated as sales on behalf of Branch C. In determining whether the remainder of FS will qualify for the manufacturing exception under § 1.954–3(a)(4)(iv), the activities of FS will include the activities of Branch A or Branch B, respectively, if each of those branches would not be treated as a separate corporation under § 1.954–3(b)(1)(ii)(*b*), if that paragraph were applied independently to each of Branch A and Branch B. See paragraph (b)(2)(ii)(*a*) of this section.

Example 2. Multiple branches satisfy § 1.954–3(a)(4)(i) with respect to the same product sold by the controlled foreign corporation. (i) *Facts.* Assume the same facts as in *Example 1*, except for the following. In addition to the design of Product X, Branch A also performs in Country A other manufacturing activities, including those ascribed to FS in *Example 1,* that are sufficient to qualify as manufacturing under § 1.954–3(a)(4)(iv) with respect to Product X. Country A imposes an effective rate of tax of 12% on sales income.

(ii) *Result.* Branch A and Branch C through their activities each independently satisfy the requirements of § 1.954–3(a)(4)(i). Therefore, § 1.954–3(b)(1)(ii)(*b*) is applied by comparing the effective rate of tax imposed on the income from the sales of Product X against the lowest effective rate of tax that would apply to the sales income in either Country A or Country C if § 1.954–3(b)(1)(ii)(*b*) were applied separately to Branch A and Branch C. Country A imposes the lower effective rate of tax, and therefore, Branch A is treated as the location of manufacture for purposes of applying § 1.954–3(b)(1)(ii)(*b*). The effective rate of tax in Country B is not considered because Branch B does not satisfy § 1.954–3(a)(4)(i). Neither Branch A nor Branch C is treated as a separate corporation because the effective rate of tax on the sales income of FS from the sale of Product X (10%) is not less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in the country in which Branch A is located (12%). Sales of Product X by the remainder of the controlled foreign corporation are not treated as made on behalf of any branch.

Example 3. Determining the location of manufacture when manufacturing activities performed by multiple branches and no branch independently satisfies § 1.954–3(a)(4)(i). (i) *Facts.* FS, a controlled foreign corporation organized in Country M, purchases raw materials from a related person. The raw materials are manufactured (under the principles of § 1.954–3(a)(4)(ii) or (a)(4)(iii)) into Product X by CM, an unrelated corporation, pursuant to a contract manufacturing arrangement. CM physically performs the substantial transformation, assembly, or conversion of the raw materials in Country C. FS has two branches, Branch A and Branch B, located in Country A and Country B respectively. Branch A, through the activities of employees of FS located in Country A, designs Product X. Branch B, through the activities of employees of FS located in Country B, controls manufacturing related logistics, provides oversight and direction during the manufacturing process, and controls the raw materials and work-in-process. FS manages the manufacturing costs and capacities related to the manufacture of Product X through employees located in Country M. Further, employees of FS located in Country M oversee the coordination between the branches. Employees of FS located in Country M also sell Product X to unrelated persons for use outside of Country M. Country M imposes an effective rate of tax on sales income of 10%. Country A imposes an effective rate of tax on sales income of 20%, and Country B imposes an effective rate of tax on sales income of 24%. Neither the remainder of FS, nor any branch of FS independently satisfies § 1.954–3(a)(4)(i). However, under the facts and circumstances of the business, FS as a whole provides a substantial contribution to the manufacture of Product X within the meaning of § 1.954–3(a)(4)(iv).

(ii) *Result.* Based on the facts, neither the remainder of FS (through the activities of its employees in Country M) nor any branch of FS independently satisfies § 1.954–3(a)(4)(i) with respect to Product X, but FS, as a whole, provides a substantial contribution through the activities of its employees to the manufacture of Product X. The remainder of FS, Branch A, and Branch B each provides a contribution through the activities of employees to the manufacture of Product X. Therefore, FS must determine the location of manufacture under paragraph (b)(1)(ii)(*c*)(*3*)(*iii*) of this section The tested sales location is Country M because the remainder of FS performs the selling activities with respect to Product X. The location of Branch A is the tested manufacturing location because the effective rate of tax imposed on FS's sales income by Country M (10%) is less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in Country A (20%), and Country A has the lowest effective rate of tax among the manufacturing branches that would, after applying § 1.954–3(b)(1)(ii)(*b*), be treated as a separate corporation. The activities of Branch B will be included in the contribution of Branch A for purposes of determining the location of manufacture of Product X because the effective rate of tax imposed on the sales income by Country M (10%) is less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in Country B (24%). Under the facts and circumstances of the business, the activities of the remainder of FS would not provide a demonstrably greater contribution to the manufacture of Product X than the activities of Branch A and Branch B, considered together. Therefore, the location of manufacture is Country A, the location of Branch A.

Example 4. Manufacturing activities performed by multiple branches, no branch independently satisfies § 1.954–3(a)(4)(i), selling activities performed by remainder of the controlled foreign corporation, remainder contribution includes branch manufacturing activities. (i) *Facts.* The facts are the same as *Example 3,* except that the effective rate of tax on sales income in Country B is 12%. In addition, under the facts of the particular business, the activities of employees of FS located in Country B and Country M, if considered together, would provide a demonstrably greater contribution to the manufacture of Product X than the activities of employees of FS located in Country A.

(ii) *Result.* Based on the facts, neither the remainder of FS (through activities of its employees in Country M) nor any branch of FS independently satisfies § 1.954–3(a)(4)(i) with respect to Product X, but FS, as a whole, provides a substantial contribution through the activities of its employees to the manufacture of Product X. The remainder of FS, Branch A, and Branch B each provide a contribution through the activities of their employees to the manufacture of Product X. Therefore, FS must determine the location of manufacture under paragraph (b)(1)(ii)(*c*)(*3*)(*iii*) of this section. The tested sales location is Country M because the remainder of FS performs the selling activities with respect to Product X. The location of Branch A is the tested manufacturing location because the effective rate of tax imposed on FS's sales income by Country M (10%) is less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in Country A (20%), and Branch A is the only branch that would, after applying § 1.954–3(b)(1)(ii)(*b*), be treated as a separate corporation. The activities of Branch B will be included in the contribution of the remainder of FS for purposes of determining the location of manufacture of Product X because the effective rate of tax imposed on the sales income by Country M (10%) is not less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in Country B (12%). Under a facts and circumstances analysis, considered together, the activities of Branch B and the remainder of FS would provide a demonstrably greater contribution to the manufacture of Product X than the activities of Branch A. Therefore, the rules of paragraph (b)(1)(ii)(a) of this section will not apply and neither Branch A nor Branch B will be treated as a separate corporation for purposes of paragraph (b)(2)(ii) of this section and § 1.954–3(b)(2)(ii).

Example 5. Manufacturing activities performed by multiple branches, no branch independently satisfies § 1.954–3(a)(4)(i), selling activities performed by remainder of

the controlled foreign corporation and a sales branch. (i) *Facts.* The facts are the same as *Example 3*, except that selling activities are also performed by Branch D in Country D, and Country D imposes a 16% effective rate of tax on sales income. In addition, under the facts and circumstances of the business, the activities of employees of FS located in Country A and Country M, considered together, would provide a demonstrably greater contribution to the manufacture of Product X than the activities of employees of FS located in Country B.

(ii) *Result.* Based on the facts, neither the remainder of FS nor any branch of FS independently satisfies § 1.954–3(a)(4)(i) with respect to Product X, but FS, as a whole, provides a substantial contribution through the activities of its employees to the manufacture of Product X. The remainder of FS, Branch A, and Branch B each provide a contribution through the activities of their employees to the manufacture of Product X. Therefore, FS must determine the location of manufacture under paragraph (b)(1)(ii)(*c*)(*3*)(*iii*) of this section. Further, pursuant to paragraph (b)(1)(ii)(*c*)(*1*) of this section, paragraph (b)(1)(ii)(*c*)(*3*)(*iii*) of this section must be applied separately to the sales income derived by the remainder of FS and Branch D respectively. The results with respect to the remainder of FS in this *Example 6* are the same as in *Example 3*. However, paragraph (b)(1)(ii)(*c*)(*3*)(*iii*) of this section must also be applied with respect to Branch D because Branch D performs selling activities with respect to Product X. Thus, for purposes of that sales income, the location of Branch D is the tested sales location. The location of Branch B is the tested manufacturing location because the effective rate of tax imposed on the Branch D's sales income by Country D (16%) is less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in Country B (24%), and Branch B is the only branch that would, after applying § 1.954–3(b)(1)(ii)(*b*), be treated as a separate corporation. The manufacturing activities performed in Country M by the remainder of FS and the manufacturing activities performed in Country A by Branch A will be included in Branch D's contribution to the manufacture of Product X for purposes of determining the location of manufacture of Product X with respect to Branch D's sales income because the effective rate of tax imposed on the sales income by Country D (16%) is not less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in Country M (10%) and Country A (20%). Under the facts and circumstances of the business, the activities of Branch D, Branch A, and the remainder of FS, considered together, would provide a demonstrably greater contribution to the manufacture of Product X than the activities of Branch B. Therefore, the rules of paragraph (b)(1)(ii)(*a*) of this section will not apply to Branch D and neither Branch A nor Branch D will be treated as a separate corporation for purposes of paragraph (b)(2)(ii) of this section and § 1.954–3(b)(2)(ii).

Example 6. Determining the location of manufacture when employees of remainder of controlled foreign corporation travel to location of unrelated contract manufacturer to perform manufacturing activities. (i) *Facts.* FS, a controlled foreign corporation organized in Country M, purchases raw materials from a related person. The raw materials are manufactured (under the principles of § 1.954–3(a)(4)(ii) or (a)(4)(iii)) into Product X by CM, an unrelated corporation, pursuant to a contract manufacturing arrangement. CM physically performs the substantial transformation, assembly, or conversion of the raw materials in Country C. Employees of FS located in Country M sell Product X to unrelated persons for use outside of Country M. Employees of FS located in Country M engage in product design, manage the manufacturing costs and capacities with respect to Product X, and direct the use of intellectual property for the purpose of manufacturing Product X. Quality control and oversight and direction of the manufacturing process are conducted in Country C by employees of FS who are employed in Country M but who regularly travel to Country C. Branch A, located in Country A, is the only branch of FS. Product design with respect to Product X conducted by employees of FS located in Country A is supplemental to the bulk of the design work, which is done by employees of FS located in Country M. At all times, employees of Branch A control the raw materials, work-in-process and finished goods. Employees of FS located in Country A also control manufacturing related logistics with respect to Product X. Country M imposes an effective rate of tax on sales income of 10%. Country A imposes an effective rate of tax on sales income of 20%. Neither the remainder of FS nor Branch A independently satisfies § 1.954–3(a)(4)(i). However, under the facts and circumstance of the business, FS as a whole (including Branch A) provides a substantial contribution to the manufacture of Product X within the meaning of § 1.954–3(a)(4)(iv).

(ii) *Result.* Based on the facts, neither the remainder of FS nor Branch A independently satisfies § 1.954–3(a)(4)(i) with respect to Product X, but FS, as a whole, provides a substantial contribution through the activities of its employees to the manufacture of Product X. The remainder of FS and Branch A each provide a contribution through the activities of employees to the manufacture of Product X. Therefore, FS must determine the location of manufacture under paragraph (b)(1)(ii)(*c*)(*3*)(*iii*) of this section. The tested sales location is Country M because the remainder of FS performs the selling activities with respect to Product X. The tested manufacturing location is the location of Branch A because the effective rate of tax imposed on the remainder of FS's sales income by Country M (10%) is less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in Country A (20%), and Branch A is the only branch that would, after applying § 1.954–3(b)(1)(ii)(*b*), be treated as a separate corporation. Although the activities of traveling employees are considered in determining whether FS, as a whole, makes a substantial contribution to the manufacture of Product X under § 1.954–3(a)(4)(iv), the activities of the employees of FS that are performed in Country C are not taken into consideration in determining whether Country M, the jurisdiction under the laws of which FS is organized, is the location of manufacture under paragraph (b)(1)(ii)(*c*)(*3*)(*iii*) of this section. Activities of employees performed outside the jurisdiction in which the controlled foreign corporation is organized and outside a location in which the controlled foreign corporation maintains a branch or similar establishment, are not considered in determining the location of manufacture. Under the facts and circumstances of the business, the activities of employees of FS performed in Country M do not provide a demonstrably greater contribution to the manufacture of Product X than the activities of employees of FS performed in Country A. Therefore, the location of manufacture is Country A, the location of Branch A.

(*4*) *Use of more than one branch to manufacture, produce, construct, grow, or extract separate items of personal property.* For purposes of paragraphs (b)(1)(ii)(*c*)(*2*) and (b)(1)(ii)(*c*)(*3*) of this section, an *item* of personal property refers to an individual unit of personal property rather than a type or class of personal property.

(2) [Reserved]. For further guidance, see § 1.954–3(b)(2).

(i) [Reserved]. For further guidance, see § 1.954–3(b)(2)(i).

(*a*) Treatment as separate corporations. [Reserved]. For further guidance, see § 1.954–3(b)(2)(i)(*a*).

(*b*) *Activities treated as performed on behalf of the remainder of corporation.* With respect to purchasing or selling activities performed by or through the branch or similar establishment, such purchasing or selling activities will—

(*1*) With respect to personal property manufactured, produced, or constructed by the remainder of the controlled foreign corporation (or any branch treated as the remainder of the controlled foreign corporation); or

(*2*) With respect to personal property (other than property described in paragraph (b)(2)(i)(*b*)(*1*) of this section) purchased or sold, or purchased and sold, by the remainder of the controlled foreign corporation (or any branch treated as the remainder of the controlled foreign corporation), be treated on behalf of the remainder of the controlled foreign corporation.

(*c*) [Reserved]. For further guidance, see § 1.954–3(b)(2)(i)(*c*).

(*d*) *Determination of hypothetical tax.* To the extent applicable, the principles of § 1.954–1(d)(2) shall be used in determining, under paragraph (b)(1)(i) of this section and § 1.954–3(b)(1)(i), the effective rate of tax which would apply to the income of the branch or similar establishment under the laws of the

country in which the controlled foreign corporation is created or organized, or in determining, under paragraph (b)(1)(ii) of this section and § 1.954–3(b)(1)(ii), the effective rate of tax which would apply to the income of the branch or similar establishment under the laws of the country in which the manufacturing, producing, constructing, growing, or extracting branch or similar establishment is located.

(*e*) [Reserved]. For further guidance, see § 1.954–3(b)(2)(i)(*e*).

(ii) [Reserved]. For further guidance, see § 1.954–3(b)(2)(ii).

(*a*) *Treatment as separate corporations.* The branch or similar establishment will be treated as a wholly owned subsidiary corporation of the controlled foreign corporation, and such branch or similar establishment will be deemed to be incorporated in the country in which it is located. For purposes of applying the rules of this paragraph (b)(2)(ii) and § 1.954–3(b)(2)(ii), a branch or similar establishment of a controlled foreign corporation treated as a separate corporation purchasing or selling on behalf of the remainder of the controlled foreign corporation under paragraph (b)(2)(ii)(*b*) of this section, or the remainder of the controlled foreign corporation treated as a separate corporation purchasing or selling on behalf of a branch or similar establishment of the controlled foreign corporation under § 1.954–3(b)(2)(ii)(*c*), will include any other branch or similar establishment or remainder of the controlled foreign corporation that would not be treated as a separate corporation (apart from the branch or similar establishment of a controlled foreign corporation that is treated as performing purchasing or selling activities on behalf of the remainder of the controlled foreign corporation under paragraph (b)(2)(ii)(*b*) of this section or the remainder of the controlled foreign corporation that is treated as performing purchasing or selling activities on behalf of the branch or similar establishment under § 1.954–3(b)(2)(ii)(*c*)) if the effective rate of tax imposed on the income of the purchasing or selling branch or similar establishment, or purchasing or selling remainder of the controlled foreign corporation, were tested under the principles of § 1.954–3(b)(1)(i)(*b*) or (b)(1)(ii)(*b*) against the effective rate of tax that would apply to such income if it were considered derived by such other branch or similar establishment or the remainder of the controlled foreign corporation.

(*b*) *Activities treated as performed on behalf of the remainder of corporation.* With respect to purchasing or selling activities performed by or through the branch or similar establishment, such purchasing or selling activities will—

(*1*) With respect to personal property manufactured, produced, or constructed by the remainder of the controlled foreign corporation (or any branch treated as the remainder of the controlled foreign corporation); or

(*2*) With respect to personal property (other than property described in paragraph (b)(2)(ii)(*b*)(*1*) of this section) purchased or sold, or purchased and sold, by the remainder of the controlled foreign corporation (or any branch treated as the remainder of the controlled foreign corporation), be treated as performed on behalf of the remainder of the controlled foreign corporation.

(*c*) and (*d*) [Reserved]. For further guidance, see § 1.954–3(b)(2)(ii)(*c*) and (*d*).

(*e*) *Comparison with ordinary treatment.* Income derived by a branch or similar establishment, or by the remainder of the controlled foreign corporation, shall not be determined to be foreign base company sales income under paragraph (b) of this section or § 1.954–3(b) if the income would not be so considered if it were derived by a separate controlled foreign corporation under like circumstances.

(*f*) [Reserved]. For further guidance, see § 1.954–3(b)(2)(ii)(*f*).

(3) [Reserved]. For further guidance, see § 1.954–3(b)(3).

(4) *Illustrations.* The application of this paragraph (b)(4) may be illustrated by the following examples:

Examples (1) and *(2).* [Reserved]. For further guidance, see § 1.954–3(b)(4) *Examples (1)* and *(2).*

Example (3). (i) *Facts.* Corporation E, a controlled foreign corporation incorporated under the laws of foreign Country X, is a wholly owned subsidiary of Corporation D, also a controlled foreign corporation incorporated under the laws of Country X. Corporation E maintains Branch B in foreign Country Y. Both corporations use the calendar year as the taxable year. In 1964, Corporation E's sole activity, carried on through Branch B, consists of the purchase of articles manufactured in Country X by Corporation D, a related person, and the sale of the articles through Branch B to unrelated persons. One hundred percent of the articles sold through Branch B are sold for use outside Country X and 90 percent are also sold for use outside of Country Y. The income of Corporation E derived by Branch B from such transactions is taxed to Corporation E by Country X only at the time Corporation E distributes such income to Corporation D and is taxed on the basis of what the tax (a 40 percent effective rate) would have been if the income had been derived in 1964 by Corporation E from sources within Country X from doing business through a permanent establishment therein. Country Y levies an income tax at an effective rate of 50 percent on income derived from sources within such country, but the income of Branch B for 1964 is effectively taxed by Country Y at a 5 percent rate since under the laws of such country, only 10 percent of Branch B's income is derived from sources within such country. Corporation E makes no distributions to Corporation D in 1964.

(ii) *Result.* In determining foreign base company sales income of Corporation E for 1964, Branch B is treated as a separate wholly owned subsidiary corporation of Corporation E, the 5 percent rate of tax being less than 90 percent of, and at least 5 percentage points less than the 40 percent rate. Income derived by Branch B, treated as a separate corporation, from the purchase from a related person (Corporation D), of personal property manufactured outside of Country Y and sold for use, disposition, or consumption outside of Country Y constitutes foreign base company sales income. If, instead, Corporation D were unrelated to Corporation E, none of the income would be foreign base company sales income because Corporation E would be purchasing from and selling to unrelated persons and if Branch B were treated as a separate corporation it would likewise be purchasing from and selling to unrelated persons. Alternatively, if Corporation D were related to Corporation E, but Branch B manufactured the articles prior to sale under the principles of § 1.954–3(a)(4)(iv), the income would not be foreign base company sales income because Branch B, treated as a separate corporation, would qualify for the manufacturing exception under § 1.954–3(a)(4).

Examples (4) through *(7)* [Reserved]. For further guidance, see § 1.954–3(b)(4) *Examples (4)* through *(7).*

Example (8). Uniformly applicable incentive tax rate in one country. (i) *Facts.* FS is a controlled foreign corporation organized in Country M. FS operates one branch, Branch A, located in Country A. Branch A manufactures Product X within the meaning of § 1.954–3(a)(4)(ii) or (a)(4)(iii). Raw materials used in the manufacture of Product X are purchased by FS from an unrelated person. FS engages in activities in Country M to sell Product X to a related person for use outside of Country M. Employees of FS located in Country M perform only sales functions. The effective rate imposed in Country M on the income from the sale of Product X is 10%. Country A generally imposes an effective rate of tax on income of 20%, but imposes a uniformly applicable incentive rate of tax of 10% on manufacturing income and related sales income.

(ii) *Result.* The use of Branch A to manufacture Product X does not have substantially the same tax effect as if Branch A were a wholly owned subsidiary corporation of FS because the effective rate of tax on FS's sales income from the sale of Product X in Country M (10%) is not less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in the country in

which Branch A is located (10%). Consequently, pursuant to § 1.954–3(b)(1)(ii)(*b*), Branch A is not treated as a separate corporation apart from the remainder of FS for purposes of determining foreign base company sales income.

Example (9). Manufacturing activities performed by multiple branches, no branch independently satisfies § 1.954–3(a)(4)(i), selling activities performed by remainder of the controlled foreign corporation, branch manufacturing activities included in remainder contribution. (i) *Facts.* FS, a controlled foreign corporation organized in Country M, has two branches, Branch A and Branch B, located in Country A and Country B respectively. FS purchases raw materials from a related person. The raw materials are manufactured (under the principles of § 1.954–3(a)(4)(ii) or (a)(4)(iii)) into Product X by CM, an unrelated corporation, pursuant to a contract manufacturing arrangement. CM physically performs the substantial transformation, assembly, or conversion required to manufacture Product X outside of FS's country of organization. FS manages the manufacturing costs and capacities with respect to the manufacture of Product X through employees located in Country M. Further, employees of FS located in Country M oversee the coordination between the branches. Branch A, through the activities of employees of FS located in Country A, designs Product X, controls manufacturing related logistics, and controls the raw materials and work-in-process during the manufacturing process. Branch B, through the activities of employees of FS located in Country B, provides quality control and oversight and direction during the manufacturing process. Employees of FS located in Country M sell Product X to unrelated persons for use outside of Country M. Country M imposes an effective rate of tax on sales income of 10%. Country A imposes an effective rate of tax on sales income of 12%, and Country B imposes an effective rate of tax on sales income of 24%. None of the remainder of FS, Branch A, or Branch B independently satisfies § 1.954–3(a)(4)(i). However, under the facts and circumstances of the business, FS, as a whole, provides a substantial contribution to the manufacture of Product X within the meaning of § 1.954–3(a)(4)(iv). Under the facts and circumstances of the business, the activities of the remainder of FS and Branch A, if considered together, would not provide a demonstrably greater contribution to the manufacture of Product X than the activities of Branch B. Under the facts and circumstances of the business, however, the activities of the employees of the remainder of FS and Branch A, if considered together, would constitute a substantial contribution to the manufacture of Product X.

(ii) *Result.* Based on the facts, neither the remainder of FS (through activities of its employees in Country M) nor any branch of FS independently satisfies § 1.954–3(a)(4)(i) with respect to Product X, but FS, as a whole, provides a substantial contribution through the activities of its employees to the manufacture of Product X. The remainder of FS, Branch A, and Branch B each provide a contribution through the activities of employees to the manufacture of Product X. Therefore, FS must determine the location of manufacture under paragraph (b)(1)(ii)(*c*)(*3*)(*iii*) of this section. The tested sales location is Country M because the remainder of FS performs the selling activities with respect to Product X. The location of Branch B is the tested manufacturing location because the effective rate of tax imposed on FS's sales income by Country M (10%) is less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in Country B (24%); and Branch B is the only manufacturing branch that would, after applying § 1.954–3(b)(1)(ii)(*b*), be treated as a separate corporation. The manufacturing activities performed in Country A will be included in the contribution of the remainder of FS for purposes of determining the location of manufacture of Product X because the effective rate of tax imposed on the sales income by Country M (10%) is not less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in Country A (12%). Under the facts and circumstances of the business, the manufacturing activities of the remainder of FS and Branch A, considered together, would not provide a demonstrably greater contribution to the manufacture of Product X than the activities of Branch B. Therefore, the location of manufacture is Country B, the location of Branch B. In determining that Country B is the location of manufacture, it was determined that after applying § 1.954–3(b)(1)(ii)(*b*) Branch B would be treated as a separate corporation under paragraph (b)(1)(ii)(*a*) of this section for purposes of determining foreign base company sales income. To determine whether income from the sale of Product X is foreign base company sales income, the remainder of FS takes into account the activities of Branch A because, under paragraph (b)(2)(ii)(*a*) of this section, Branch A would not be treated as a separate corporation apart from FS. The remainder of FS is considered to have manufactured Product X under § 1.954–3(a)(4)(i) because the manufacturing activities of the remainder of FS and Branch A, considered together, would make a substantial contribution to the manufacture of Product X within the meaning of § 1.954–3(a)(4)(iv). Therefore, income derived from the sale of Product X by the remainder of FS does not constitute foreign base company sales income.

(c) [Reserved]. For further guidance, see § 1.954–3(c).

(d) [Reserved]. For further guidance, see § 1.954–3(d).

(e) *Effective/applicability date of temporary regulations.* Paragraphs (b)(1)(i)(*c*), (b)(1)(ii)(*a*), (b)(1)(ii)(*c*), (b)(2)(i)(*b*), (b)(2)(ii)(*a*), (b)(2)(ii)(*b*), (b)(2)(ii)(*e*), and (b)(4) *Example (3)*, *Example (8)*, and *Example (9)* of this section shall apply to taxable years of controlled foreign corporations beginning after June 30, 2009, and for taxable years of United States shareholders in which or with which such taxable years of the controlled foreign corporations end.

(f) *Application of temporary regulations to earlier taxable years.* For the application of these temporary regulations retroactively with respect to taxable years of controlled foreign corporations and to open taxable years of United States shareholders in which or with which such taxable years of the controlled foreign corporations end, see § 1.954–3(d).

(g) *Expiration date.* The applicability of this section expires on or before December 23, 2011.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: December 18, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9440]

RIN 1545–BI39

Employer's Annual Federal Tax Return and Modifications to the Deposit Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations relating to the annual filing of Federal employment tax returns and requirements for employment tax deposits. These temporary regulations relate to sections 6011 and 6302 of the Internal Revenue Code (Code) concerning reporting and paying income taxes withheld from wages and reporting and paying taxes under the Federal Insurance Contributions Act (FICA) (collectively, ''employment taxes''). These temporary regulations generally allow certain employers to file a Form 944, ''Employer's ANNUAL Federal Tax Return,'' rather than Form 941, ''Employer's QUARTERLY Federal Tax Return.'' In addition to rules related to Form 944, the temporary regulations provide an additional method for employers who file Form 941 to determine whether the amount of accumulated employment taxes is considered de minimis. The portions of this document that are final regulations

provide necessary cross-references to the temporary regulations. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on December 29, 2008.

Applicability Date: For dates of applicability, see §§ 31.6011(a)–1T(g), 31.6011(a)–4T(d), and 31.6302–1T(n).

FOR FURTHER INFORMATION CONTACT: Audra Dineen, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These temporary regulations amend the Regulations on Employment Taxes and Collection of Income Tax at Source (26 CFR part 31) under section 6011 relating to the Federal employment tax return filing requirements and section 6302 relating to the employment tax deposit requirements. These temporary regulations are part of the IRS's effort to reduce taxpayer burden by permitting certain employers to file one return annually to report their employment tax liabilities instead of four quarterly returns. These temporary regulations affect taxpayers that file Form 941, ''Employer's QUARTERLY Federal Tax Return,'' Form 944, ''Employer's ANNUAL Federal Tax Return,'' and any related Spanish-language returns or returns for U.S. possessions.

On January 3, 2006, a temporary regulation (TD 9239) relating to Form 944 (the 2006 temporary regulation) was published in the **Federal Register** (71 FR 11). A notice of proposed rulemaking (REG–148568–04) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (71 FR 46) (the 2006 proposed regulation). A correction to the 2006 temporary regulation was published in the **Federal Register** on March 17, 2006 (71 FR 13766). No requests for a public hearing were received; therefore, no public hearing was held. Comments responding to the notice of proposed rulemaking were received.

Those comments requested that use of Form 944 be changed from mandatory to voluntary and that the amount of the employment tax liability used to determine whether employers are eligible to file Form 944 (the ''eligibility threshold'') be increased. The Treasury Department and the IRS agree with the suggestion to make Form 944 voluntary. The Treasury Department and the IRS will continue to consider whether to increase the eligibility threshold. The final regulations allow the eligibility threshold to be increased through future guidance.

These temporary regulations continue to permit most employers who file Form 944 to pay accumulated employment taxes annually when they file their returns and modify the lookback period and *de minimis* deposit rule for these employers. In addition to the rules related to Form 944, these temporary regulations provide an additional method for employers who file Forms 941 quarterly to determine whether the amount of accumulated employment taxes is considered de minimis. This safe harbor was originally proposed in the 2006 proposed regulation.

Explanation of Provisions

Form 944—Regulations Concerning Filing Requirements Under Section 6011

These temporary regulations allow certain employers to file an annual employment tax return, Form 944, to report their social security, Medicare, and withheld Federal income taxes rather than the quarterly Form 941. For these employers, Form 944 will replace Form 941 and reduce their burden by reducing the number of returns they are required to file each year. Form 944 will not replace Form 943, ''Employer's Annual Tax Return for Agricultural Employees'' or Schedule H (Form 1040), ''Household Employment Taxes.'' However, if an employer files Form 944, the employer may choose to report wages with respect to household employees on Form 944, instead of reporting such wages on Schedule H (Form 1040). Form 944 is generally due January 31 of the year following the tax year for which the return is filed. If the employer timely deposits all accumulated employment taxes on or before January 31 of the year following the tax year for which the return is filed, the employer will have 10 extra calendar days to file Form 944 pursuant to § 31.6071(a)–1(a).

Under the 2006 proposed and temporary regulations, the IRS sent a notification letter to qualified employers with an estimated employment tax liability of $1,000 or less requiring them to participate in the Employers' Annual Federal Tax Program (Form 944) (hereinafter referred to as the Form 944 Program). Employers were eligible to opt out only if they estimated that their employment tax liability would exceed the $1,000 threshold or if they wanted to e-file Forms 941 quarterly instead. New employers who estimated that their employment tax liability would be $1,000 or less also were eligible to file Form 944. These employers were identified by their responses on Form SS–4, Application for Employer Identification Number, and notified that they were required to file Form 944 in the letter advising them of their employer identification number. Employers that were not identified by the IRS in either manner were able to contact the IRS if they thought they were qualified. If the IRS determined they were qualified, it would send confirmation to these employers. Once employers received this letter, they were required to file Form 944 instead of Forms 941.

Commentators suggested that Form 944 should be voluntary instead of mandatory. This benefits taxpayers because it allows them to choose the filing requirement they prefer and to change from year to year more easily. In addition, commentators suggested that the threshold should be increased in order to allow more employers to take advantage of Form 944 and to bring the threshold in line with the de minimis deposit rule amount, which is less than $2,500 as discussed more fully in this preamble. Sections 31.6011(a)–1T(a)(5) and 31.6011(a)–4T(a)(4) have been revised to incorporate the suggestion to make the program voluntary. Although these temporary regulations do not adopt the suggestion to increase the eligibility threshold, the Treasury Department and the IRS will continue to consider this suggestion and may increase the threshold in the future. To accommodate any potential increase to the threshold amount before final regulations are issued, these temporary regulations contain a provision that allows the IRS to increase the eligibility threshold by guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(*b*).

Under §§ 31.6011(a)–1T(a)(5) and 31.6011(a)–4T(a)(4) in effect for taxable years beginning on or after January 1, 2009, employers who estimate that their annual employment tax liability will be $1,000 or less can contact the IRS to express their desire to file Form 944 instead of Forms 941 for a taxable year. Only upon such a request will the IRS send a notification letter to qualified employers confirming that they may file Form 944 for that taxable year. Once employers receive this notice they must file Form 944 and cannot file Forms 941 instead for a taxable year until they contact the IRS to change their filing requirement to Form 941 for that taxable year and receive confirmation that their filing requirement has been changed.

The IRS will issue guidance published in the Internal Revenue Bulletin informing employers how they can contact the IRS to participate in the Form 944 Program and how they can

elect out if they later decide that they want to file Forms 941 instead of Form 944. Under the 2006 regulations, employers were only eligible to opt out if they estimated that their employment tax liability would exceed the $1,000 threshold or if they wanted to e-file Forms 941 quarterly instead. Because the program is being made voluntary, beginning in tax year 2010, employers will be able to opt out for any reason if they follow procedures to be provided in future guidance. Employers that have received notification of their qualification to file Form 944, even if the notification was received prior to the publication of these regulations, must continue to file Form 944 unless they properly opt out of the Form 944 program.

In addition, a few clarifying revisions were made to the regulations under section 6011. First, §§ 31.6011(a)–1T(a) and 31.6011(a)–4T(a) were clarified by adding references to §§ 31.6011(a)–1T(a)(5) and 31.6011(a)–4T(a)(4) to account for Form 944 in §§ 31.6011(a)–1T(a)(1) and 31.6011(a)–4T(a)(1). Second, §§ 31.6011(a)–1(a)(5) and 31.6011(a)–4(a)(4) were revised to remove the details regarding the procedures to use for opting out of the Form 944 program and provide that the IRS will issue guidance published in the Internal Revenue Bulletin containing these procedures. The IRS will issue procedures in other forms of guidance published in the IRB regarding how to opt out of Form 944 for taxable year 2009 and how to elect to file Form 944 for taxable year 2010 and beyond. This will allow the IRS to administer the program more effectively, by having the flexibility to adjust the procedures as necessary due to changes in the program and taxpayer response.

Form 944—Regulations Concerning Deposit Requirements Under Section 6302

These temporary regulations revise the 2006 temporary regulation concerning requirements for employers to make deposits of employment taxes under section 6302 and § 31.6302–1 to make a few clarifying changes to § 31.6302–1 related to Form 944. These temporary regulations continue to permit employers who file Form 944 to deposit or pay their accumulated employment taxes annually when they file their Form 944 if they satisfy the provisions of the de minimis deposit rule, as modified in § 31.6302–1T(f)(4)(iii), rather than make monthly or semi-weekly deposits. These temporary regulations continue to contain the exception in § 31.6302–1T(c)(6) for employers who filed Form 944 in the preceding year but who no longer qualify because their annual employment tax liability exceeds the eligibility threshold.

Also, these temporary regulations continue to provide a different lookback period for Form 944 filers to use to determine an employer's status as a monthly or semi-weekly depositor. The lookback period was changed in the 2006 temporary and proposed regulations because once an employer begins to file annual Form 944 returns, it may not be possible for the IRS to determine the employer's aggregate amount of employment tax liability during the lookback period set forth in the existing regulations (12-month period ending the preceding June 30) because the employer may not have filed any quarterly returns during that period. Under the 2006 temporary regulation, § 31.6302–1T(b)(4)(i) provided that the lookback period for employers who filed Form 944 during the current, or preceding, calendar year is the second calendar year preceding the current calendar year. For example, the lookback period for calendar year 2009 is calendar year 2007.

In these temporary regulations, § 31.6302–1T(b)(4)(i) is clarified to reflect that the lookback period is the second preceding calendar year for employers who filed Form 944 for either of the two previous calendar years, not just the one previous calendar year. This clarification was needed because an employer would not have filed the requisite quarterly returns to use the other lookback period (12-month period ending June 30) if they filed Form 944 in either of the prior years. For example, if an employer filed Form 944 in 2006 but not in 2007, the lookback period for 2008 would be 2006, because they would not have filed quarterly returns for July through December 2006 and, thus, it would be impossible to use July 2006–June 2007 as the lookback period.

Section 31.6302–1T(b)(4)(i) also is revised to clarify that the amount of tax reported during the lookback period is determined without regard to the employer's filing requirement. In other words, in the preceding example, if an employer is required to file Forms 941 for 2008 but filed Form 944 for the lookback period (2006), the amount of employment tax liability reported for the lookback period would be the amount of employment tax the employer reported on its Form 944 for 2006 even though the employer will file Forms 941 to report its 2008 liability. The reverse also is true. The employment tax liability reported for the lookback period (2006) of an employer required to file Form 944 for 2008 would be the sum of the liabilities it reported on its four Forms 941 for 2006.

In addition, § 31.6302–1T(b)(4)(ii) is revised by changing the term ''supplemental'' to ''adjusted'' and deleting the reference to Form 941c, ''Supporting Statement To Correct Information,'' due to the revisions to the process of adjusting employment tax liability. Final regulations (TD 9405) relating to employment tax adjustments were published in the **Federal Register** (73 FR 37371) on July 1, 2008. For periods ending on or before December 31, 2008, the employment tax liability reported on the original return includes any prior period adjustments reported on that return (for example, prior period adjustments supported by a Form 941c attached to the return for a subsequent period). For periods beginning on or after January 1, 2009, employers can no longer make prior period adjustments on a return. Instead, employers will use an adjusted return or claim for refund to make corrections to the amounts reported on their original returns. Last, § 31.6302–1T is revised by adding references to Form 944 in paragraphs (e)(2) and (g)(1).

Form 941—New Deposit Rule Safe Harbor Under Section 6302

In addition to revising the 2006 temporary regulation regarding Form 944, these temporary regulations incorporate the safe harbor for employers who file Forms 941 that was included in the 2006 proposed regulation. The safe harbor helps small employers who file Form 941 and have an unexpected increase in their deposit liability for a quarterly return period. These temporary regulations provide an alternate method for determining whether the employer's employment tax obligations are de minimis, which is based on the employment taxes due for the prior return period. This special rule applies only to employers filing quarterly tax returns and, therefore, does not apply to employers who file Form 944.

Generally, deposits of taxes reported on Form 941, ''Employer's QUARTERLY Federal Tax Return,'' are due monthly or semi-weekly. If an employer failed to make timely deposits of employment taxes, the employer, absent reasonable cause, is subject to the penalty for failure to deposit under section 6656. Prior to these temporary regulations, § 31.6302–1(f)(4) (the *de minimis* deposit rule) provided that, for quarterly and annual return periods, if the aggregate amount of employment taxes for the return period is less than $2,500 and that amount was deposited or paid

with a timely filed return for that return period, the amount was deemed to have been timely deposited and the employer was not subject to the penalty for failure to deposit. Accordingly, employers who paid their employment taxes when they timely filed their quarterly returns were deemed to have timely deposited their taxes if the amount of taxes due was less than $2,500 for that quarter. Similarly, employers who paid their employment taxes when they timely filed their annual returns were deemed to have timely deposited if the amount of taxes due was less than $2,500 for the entire year.

Under these temporary regulations, pursuant to § 31.6302–1T(f)(4)(i) and (ii), employers may pay their employment taxes when they timely file their quarterly returns and be deemed to have timely deposited if the amount of the taxes due for the current quarter or for the prior quarter is less than $2,500.

This special rule can be illustrated by the following example: An employer has less than $50,000 in employment taxes reported during the lookback period and is therefore a monthly depositor under § 31.6302–1(b)(2). The employer's employment tax liabilities for the first and second quarters of 2010 are $2,450 and $2,400, respectively. In the third quarter of 2010, however, the employer's employment tax liability is $2,550. Under the de minimis deposit rule in effect prior to these temporary regulations, if the employer pays the $2,550 with its return for the third quarter of 2010, the amount would not be considered timely deposited for that quarter and, therefore, the employer would be assessed the section 6656 penalty for failure to deposit.

Modifying the de minimis deposit rule to allow employers to base the determination on the employment taxes due for the immediately preceding quarter provides a safe harbor for employers regarding their deposit obligations. Thus, in this example, when the employer had an increase in its employment tax liability for the third quarter of 2010, its remittance still would be deemed to have been timely deposited because the taxes for the immediately preceding return period were de minimis. These regulations have no application to the One-Day rule in § 31.6302–1(c)(2), which requires employers to make a deposit on the next banking day if they accumulate $100,000 or more of employment taxes on any day during a deposit period. Therefore, if an employer accumulates $100,000 or more of employment taxes during a deposit period, the employer must make a deposit on the next banking day even if the employer's employment tax liability for the prior quarter was de minimis. Due to the programming changes necessary to implement this safe harbor, the safe harbor will be available for deposit periods beginning on or after January 1, 2010.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act, please refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these final regulations are Raymond Bailey and Audra M. Dineen of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Amendments to the Regulations

■ Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Paragraph. 1.** The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 31.6011(a)–1 is amended by revising paragraph (a)(1) and adding paragraph (g) to read as follows:

§ 31.6011(a)–1 Returns under Federal Insurance Contributions Act.

(a) * * * (1) [Reserved]. For further guidance, see § 31.6011(a)–1T(a)(1).

* * * * *

(g) [Reserved]. For further guidance, see § 31.6011(a)–1T(g).

■ **Par. 3.** Section 31.6011(a)–1T is revised to read as follows:

§ 31.6011(a)–1T Returns under Federal Insurance Contributions Act (temporary).

(a) *Requirement*—(1) *In general.* Except as otherwise provided in § 31.6011(a)–5, every employer required to make a return under the Federal Insurance Contributions Act, as in effect prior to 1955, for the calendar quarter ended December 31, 1954, in respect of wages other than wages for agricultural labor, shall make a return for each subsequent calendar quarter (whether or not wages are paid in such quarter) until he has filed a final return in accordance with § 31.6011(a)–6. Except as otherwise provided in § 31.6011(a)–5, every employer not required to make a return for the calendar quarter ended December 31, 1954, shall make a return for the first calendar quarter thereafter in which he pays wages, other than wages for agricultural labor, subject to the tax imposed by the Federal Insurance Contributions Act as in effect after 1954, and shall make a return for each subsequent calendar quarter (whether or not wages are paid therein) until he has filed a final return in accordance with § 31.6011(a)–6. Except as otherwise provided in § 31.6011(a)–8 and in § 31.6011(a)–1(a)(3), (a)(4), and (a)(5), Form 941, ''Employer's QUARTERLY Federal Tax Return,'' is the form prescribed for making the return required by this subparagraph. Such return shall not include wages for agricultural labor required to be reported on any return prescribed by § 31.6011(a)–1(a)(2). The return shall include wages received by an employee in the form of tips only to the extent of the tips reported by the employee to the employer in a written statement furnished to the employer pursuant to section 6053(a).

(a)(2) through (a)(4) [Reserved]. For further guidance, see § 31.6011(a)–1(a)(2) through (a)(4).

(5) *Employers in the Employers' Annual Federal Tax Program (Form 944)*—(i) *In general.* Employers notified of their qualification for the Employers' Annual Federal Tax Program (Form 944) are required to file Form 944, ''Employer's ANNUAL Federal Tax Return,'' instead of Form 941 to make a return as required by paragraph (a)(1) of this section. Upon proper request by the employer, the Internal Revenue Service (IRS) will notify employers in writing of their qualification for the Employers' Annual Federal Tax Program (Form 944). Qualified employers are those with an estimated annual employment tax liability (that is, social security, Medicare, and withheld Federal income

taxes) of $1,000 or less for the entire calendar year, except employers required under § 31.6011(a)–1(a)(2) to make a return on Form 943, ''Employer's Annual Federal Tax Return For Agricultural Employees,'' or § 31.6011(a)–1(a)(3) to make a return on Schedule H (Form 1040), ''Household Employment Taxes.'' The IRS may increase the amount of the estimated annual employment tax liability that qualifies employers to file Form 944 through a revenue procedure, notice, or other IRS guidance published in the Internal Revenue Bulletin. The IRS will notify employers when they no longer qualify for the Employers' Annual Federal Tax Program (Form 944) and must file Forms 941 instead.

(ii) *Requests to participate and eligibility to opt out of the Employers' Annual Federal Tax Program (Form 944).* The IRS will establish procedures in a revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin for employers to follow to request to receive notification to participate in the Employers' Annual Federal Tax Program (Form 944) and to be removed from the Employers' Annual Federal Tax Program (Form 944) after becoming a participant in order to file Forms 941 instead.

(b) through (f) [Reserved]. For further guidance, see § 31.6011(a)–1(b) through (f).

(g) *Effective/applicability dates*—(1) *In general.* Paragraphs (a)(1) and (a)(5) of this section apply to taxable years beginning on or after December 30, 2008. The rules of paragraph (a)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)–1. The rules of paragraph (a)(5) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)–1T in effect prior to December 30, 2008.

(2) *Expiration date.* The applicability of this section will expire on or before December 23, 2011.

■ **Par. 4.** Section 31.6011(a)–4 is amended by revising paragraph (a)(1) and adding paragraph (d) to read as follows:

§ 31.6011(a)–4 Returns of income tax withheld.

(a) * * * (1) [Reserved]. For further guidance, see § 31.6011(a)–4T(a)(1).

* * * * *

(d) [Reserved]. For further guidance, see § 31.6011(a)–4T(d).

■ **Par. 5.** Section 31.6011(a)–4T is revised to read as follows:

§ 31.6011(a)–4T Returns of income tax withheld (temporary).

(a) *Withheld from wages*—(1) *In general.* Except as otherwise provided in § 31.6011(a)–4(a)(2), (a)(3), (a)(4), and (b), and in § 31.6011(a)–5, every person required to make a return of income tax withheld from wages pursuant to section 3402 shall make a return for the first calendar quarter in which the person is required to deduct and withhold such tax and for each subsequent calendar quarter, whether or not wages are paid therein, until the person has filed a final return in accordance with § 31.6011(a)–6. Except as otherwise provided in § 31.6011(a)–4(a)(2), (a)(3), (a)(4) and (b), and in § 31.6011(a)–8, Form 941, ''Employer's QUARTERLY Federal Tax Return,'' is the form prescribed for making the return required under this paragraph (a)(1).

(a)(2) through (a)(3) [Reserved]. For further guidance, see § 31.6011(a)–4(a)(2) through (a)(3).

(4) *Employers in the Employers' Annual Federal Tax Program (Form 944)*—(i) *In general.* Employers notified of their qualification for the Employers' Annual Federal Tax Program (Form 944) are required to file Form 944, ''Employer's ANNUAL Federal Tax Return,'' instead of Form 941 to make a return of income tax withheld from wages pursuant to section 3402. Upon proper request by the employer, the Internal Revenue Service (IRS) will notify employers in writing of their qualification for the Employers' Annual Federal Tax Program (Form 944). Qualified employers are those with an estimated annual employment tax liability (that is, social security, Medicare, and withheld federal income taxes) of $1,000 or less for the entire calendar year, except employers required under § 31.6011(a)–4(a)(2) to make a return on Schedule H (Form 1040), ''Household Employment Taxes,'' or § 31.6011(a)–4(a)(3) to make a return on Form 943, ''Employer's Annual Federal Tax Return For Agricultural Employees.'' The IRS may increase the amount of the estimated annual employment tax liability that qualifies employers to file Form 944 through a revenue procedure, notice or other IRS guidance published in the Internal Revenue Bulletin. The IRS will notify employers when they no longer qualify for the Employers' Annual Federal Tax Program (Form 944) and must file Forms 941 instead.

(ii) *Request to participate and eligibility to opt out of the Employers' Annual Federal Tax Program (Form 944).* The IRS will establish procedures in a revenue procedure, notice, or other IRS guidance published in the Internal Revenue Bulletin for employers to follow to request to receive notification to participate in the Employers' Annual Federal Tax Program (Form 944) and to be removed from the Employers' Annual Federal Tax Program (Form 944) after becoming a participant in order to file Forms 941 instead.

(b) through (c) [Reserved]. For further guidance, see § 31.6011(a)–4(b) through (c).

(d) *Effective/applicability dates*—(1) *In general.* Paragraphs (a)(1) and (a)(4) of this section apply to taxable years beginning on or after December 30, 2008. The rules of paragraph (a)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)–4. The rules of paragraph (a)(4) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)–4T in effect prior to December 30, 2008.

(2) *Expiration date.* The applicability of this section will expire on or before December 23, 2011.

■ **Par. 6.** Section 31.6302–0 is amended by revising the entries for § 31.6302–1(f)(4)(i), (g)(1) and (n) to read as follows:

§ 31.6302–0 Table of contents.

* * * * *

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(f) * * *

(4) * * *

(i) [Reserved]. For further guidance, see § 31.6302–0T, the entry for § 31.6302–1T(f)(4)(i).

* * * * *

(g) * * *

(1) [Reserved]. For further guidance, see § 31.6302–0T, the entry for § 31.6302–1T(g)(1).

* * * * *

(n) [Reserved]. For further guidance, see § 31.6302–0T, the entry for § 31.6302–1T(n).

■ **Par. 7.** Section 31.6302–0T is added to read as follows:

§ 31.6302–0T Table of contents (temporary).

This section lists the captions that appear in § 31.6302–1T.

Section 31.6302–1T Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992 (temporary).

(a) through (b)(3) [Reserved]. For further guidance, see § 31.6302–0, the entries for § 31.6302–1(a) through (b)(3).

(4) Lookback period.

(i) In general.

(ii) Adjustments and claims for refund.

(c)(1) through (c)(4) [Reserved]. For further guidance, see § 31.6302–0, the entries for § 31.6302–1(c)(1) through (c)(4).

(c)(5) Exception to the monthly and semi-weekly deposit rules for employers in the Employers' Annual Federal Tax Program (Form 944).

(c)(6) Extension of time to deposit for employers in the Employers' Annual Federal Tax Program (Form 944) during the preceding year.

(d) *Examples 1* through *5* [Reserved]. For further guidance, see § 31.6302–0, the entries for § 31.6302–1(d) *Examples 1* through *5*.

Example 6. Extension of time to deposit for employers in the Employer's Annual Federal Tax Program (Form 944) during the preceding year satisfied.

(e) through (f)(3) [Reserved]. For further guidance, see § 31.6302–0, the entries for § 31.6302–1(e) through (f)(3).

(4) De minimis rule.

(i) De minimis deposit rules for quarterly and annual return periods beginning or after January 1, 2001.

(ii) De minimis deposit rule for quarterly return periods beginning on or after January 1, 2010.

(iii) De minimis deposit rule for employers who file Form 944.

(f)(5) *Examples 1* and *2* [Reserved]. For further guidance, see § 31.6302–0, the entries for § 31.6302–1(f)(5) *Examples 1* and *2*.

Example 3. De minimis deposit rule for employers who file Form 944 satisfied.

(g) [Reserved]. For further guidance, see § 31.6302–0, the entry for § 31.6302–1(g).

(1) In general.

(g)(2) through (m) [Reserved]. For further guidance, see § 31.6302–0, the entries for § 31.6302–1(g)(2) through (m).

(n) Effective/applicability dates.

■ **Par. 8.** Section 31.6302–1 is amended by revising paragraphs (e)(2), (f)(4)(i), (g)(1) and (n) and adding paragraph (f)(4)(ii) to read as follows:

* * * * *

(e) * * *

(2) [Reserved]. For further guidance, see § 31.6302–1T(e)(2).

(f) * * *

(4) * * * (i) and (ii) [Reserved]. For further guidance, see § 31.6302–1T(f)(4)(i) and (ii).

* * * * *

(g) * * * (1) [Reserved]. For further guidance, see § 31.6302–1T(g)(1).

* * * * *

(n) [Reserved]. For further guidance, see § 31.6302–1T(n).

■ **Par. 9.** Section 31.6302–1T is revised to read as follows:

§ 31.6302–1T Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992 (temporary).

(a) through (b)(3) [Reserved]. For further guidance, see § 31.6302–1(a) through (b)(3).

(4) *Lookback period*—(i) *In general.* For employers who file Form 941, ''Employer's QUARTERLY Federal Tax Return,'' the lookback period for each calendar year is the twelve month period ended the preceding June 30. For example, the lookback period for calendar year 2006 is the period July 1, 2004, to June 30, 2005. The lookback period for employers who file Form 944, ''Employer's ANNUAL Federal Tax Return,'' or filed Form 944 either of the two previous calendar years, is the second calendar year preceding the current calendar year. For example, the lookback period for calendar year 2006 is calendar year 2004. In determining status as either a monthly or semi-weekly depositor, an employer should determine the aggregate amount of employment tax liabilities reported on its return(s) (Form 941 or Form 944) for the lookback period. The amount of employment tax liabilities reported for the lookback period is the amount the employer reported on either Form 941 or Form 944 even if the employer is required to file the other form(s) for the current calendar year. New employers shall be treated as having employment tax liabilities of zero for any part of the lookback period before the date the employer started or acquired its business.

(ii) *Adjustments and claims for refund.* The employment tax liability reported on the original return for the return period is the amount taken into account in determining whether the aggregate amount of employment taxes reported for the lookback period exceeds $50,000. Any amounts reported on adjusted returns or claims for refund pursuant to sections 6205, 6402, 6413 and 6414 filed after the due date of the original return are not taken into account when determining the aggregate amount of employment taxes reported for the lookback period. However, prior period adjustments reported on Forms 941 or 944 for 2008 and earlier years are taken into account in determining the employment tax liability for the return period in which the adjustments are reported.

(c)(1) through (c)(4) [Reserved]. For further guidance, see § 31.6302–1(c)(1) through (c)(4).

(5) *Exception to the monthly and semi-weekly deposit rules for employers in the Employers' Annual Federal Tax Program (Form 944).* Generally, an employer who files Form 944 for a taxable year may remit its accumulated employment taxes with its timely filed return for that taxable year and is not required to deposit under either the monthly or semi-weekly rules set forth in § 31.6302–1(c)(1) and (2) during that taxable year. An employer who files Form 944 whose actual employment tax liability exceeds the eligibility threshold, as set forth in §§ 31.6011(a)–1T(a)(5) and 31.6011(a)–4T(a)(4), will not qualify for this exception and should follow the deposit rules set forth in this section.

(6) *Extension of time to deposit for employers in the Employers' Annual Federal Tax Program (Form 944) during the preceding year.* An employer who filed Form 944 for the preceding year but will file Forms 941 instead for the current year will be deemed to have timely deposited its current year's January deposit obligation(s) under § 31.6302–1(c)(1) through (4) if the employer deposits the amount of such deposit obligation(s) by March 15 of that year.

(d) *Examples 1* through *5* [Reserved]. For further guidance, see § 31.6302–1(d) *Examples 1* through *5*.

Example 6. Extension of time to deposit for employers who filed Form 944 for the preceding year satisfied. F (a monthly depositor) was notified to file Form 944 to report its employment tax liabilities for the 2006 calendar year. F filed Form 944 on January 31, 2007, reporting a total employment tax liability for 2006 of $3,000. Because F's annual employment tax liability for the 2006 taxable year exceeded $1,000 (the applicable eligibility threshold for that taxable year), the Internal Revenue Service (IRS) notified F to file Forms 941 for calendar year 2007 and thereafter. Based on F's liability during the lookback period (calendar year 2005, pursuant to paragraph (b)(4)(i) of this section), F is a monthly depositor for 2007. F accumulates $1,000 in employment taxes during January 2007. Because F is a monthly depositor, F's January deposit obligation is due February 15, 2007. F does not deposit these accumulated employment taxes on February 15, 2007. F accumulates $1,500 in employment taxes during February 2007. F's February deposit is due March 15, 2007. F deposits the $2,500 of employment taxes accumulated during January and

February on March 15, 2007. Pursuant to § 31.6302–1(c)(6), F will be deemed to have timely deposited the employment taxes due for January 2007, and, thus, the IRS will not impose a failure-to-deposit penalty under section 6656 for that month.

(e)(1) [Reserved]. For further guidance, see § 31.6302–1(e)(1).

(2) The term *employment taxes* does not include taxes with respect to wages for domestic service in a private home of the employer, unless the employer is otherwise required to file a Form 941 or Form 944 under § 31.6011(a)–4, § 31.6011(a)–4T, or § 31.6011(a)–5. In the case of employers paying advance earned income credit amounts, the amount of taxes required to be deposited shall be reduced by advance amounts paid to employees. Also, see § 31.6302–3 concerning a taxpayer's option with respect to payments made before January 1, 1994, to treat backup withholding amounts under section 3406 separately.

(f)(1) through (f)(3) [Reserved]. For further guidance, see § 31.6302–1(f)(1) through (f)(3).

(4) *De minimis rule*—(i) *De minimis deposit rules for quarterly and annual return periods beginning on or after January 1, 2001.* If the total amount of accumulated employment taxes for the return period is de minimis and the amount is fully deposited or remitted with a timely filed return for the return period, the amount deposited or remitted will be deemed to have been timely deposited. The total amount of accumulated employment taxes is de minimis if it is less than $2,500 for the return period or if it is de minimis pursuant to paragraph (f)(4)(ii) of this section.

(ii) *De minimis deposit rule for quarterly return periods beginning on or after January 1, 2010.* For purposes of paragraph (f)(4)(i) of this section, if the total amount of accumulated employment taxes for the immediately preceding quarter was less than $2,500, unless § 31.6302–1(c)(3) applies to require a deposit at the close of the next banking day, then the employer will be deemed to have timely deposited the employer's employment taxes for the current quarter if the employer complies with the time and method payment requirements contained in paragraph (f)(4)(i) of this section.

(iii) *De minimis deposit rule for employers who file Form 944.* An employer who files Form 944 whose employment tax liability for the year equals or exceeds $2,500 but whose employment tax liability for a quarter of the year is *de minimis* pursuant to paragraph (f)(4)(i) of this section will be deemed to have timely deposited the employment taxes due for that quarter if the employer fully deposits the employment taxes accumulated during the quarter by the last day of the month following the close of that quarter. Employment taxes accumulated during the fourth quarter can be either deposited by January 31 or remitted with a timely filed return for the return period.

(5) *Examples 1* and *2* [Reserved]. For further guidance, see § 31.6302–1(f)(5) *Examples 1* and *2*.

Example 3. De minimis deposit rule for employers who file Form 944 satisfied. K (a monthly depositor) was notified to file Form 944 to report its employment tax liabilities for the 2006 calendar year. In the first quarter of 2006, K accumulates employment taxes in the amount of $1,000. On April 28, 2006, K deposits the $1,000 of employment taxes accumulated in the 1st quarter. K accumulates another $1,000 of employment taxes during the second quarter of 2006. On July 31, 2006, K deposits the $1,000 of employment taxes accumulated in the 2nd quarter. K's business grows and accumulates $1,500 in employment taxes during the third quarter of 2006. On October 31, 2006, K deposits the $1,500 of employment taxes accumulated in the 3rd quarter. K accumulates another $2,000 in employment taxes during the fourth quarter. K files Form 944 on January 31, 2007, reporting a total employment tax liability for 2006 of $5,500 and submits a check for the remaining $2,000 of employment taxes with the return. K will be deemed to have timely deposited the employment taxes due for all of 2006, because K complied with the de minimis deposit rule provided in paragraph (f)(4)(iii) of this section. Therefore, the IRS will not impose a failure-to-deposit penalty under section 6656 for any month of the year. Under this de minimis deposit rule, as K was required to file Form 944 for calendar year 2006, if K's employment tax liability for a quarter is de minimis, then K may deposit that quarter's liability by the last day of the month following the close of the quarter. This de minimis rule allows K to have the benefit of the same quarterly de minimis amount K would have received if K filed Form 941 each quarter instead of Form 944 annually. Thus, as K's employment tax liability for each quarter was de minimis, K could deposit quarterly.

(g) *Agricultural employers—special rules*—(1) *In general.* An agricultural employer reports wages paid to farm workers annually on Form 943 (Employer's Annual Tax Return for Agricultural Employees) and reports wages paid to nonfarm workers quarterly on Form 941 or annually on Form 944. Accordingly, an agricultural employer must treat employment taxes reportable on Form 943 (''Form 943 taxes'') separately from employment taxes reportable on Form 941 or Form 944 (''Form 941 or Form 944 taxes''). Form 943 taxes and Form 941 or Form 944 taxes are not combined for purposes of determining whether a deposit of either is due, whether the One-Day rule of § 31.6302–1(c)(3) applies, or whether any safe harbor is applicable. In addition, separate Federal tax deposit coupons must be used to deposit Form 943 taxes and Form 941 or Form 944 taxes. (See § 31.6302–1(b) for rules for determining an agricultural employer's deposit status for Form 941 taxes.) The determination of whether an agricultural employer is a monthly or semi-weekly depositor of Form 943 taxes is made according to the rules of this paragraph (g).

(g)(2) through (m) [Reserved]. For further guidance, see § 31.6302–1(g)(2) through (m).

(n) *Effective/applicability dates*—(1) *In general.* Sections 31.6302–1 through 31.6302–3 apply with respect to the deposit of employment taxes attributable to payments made after December 31, 1992. To the extent that the provisions of §§ 31.6302–1 through 31.6302–3 are inconsistent with the provisions of §§ 31.6302(c)–1 and 31.6302(c)–2, a taxpayer will be considered to be in compliance with §§ 31.6301–1 through 31.6302–3 if the taxpayer makes timely deposits during 1993 in accordance with §§ 31.6302(c)–1 and 31.6302(c)–2. Paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6*, (e)(2), (f)(4)(i), (f)(4)(iii), (f)(5) *Example 3*, and (g)(1) of this section apply to taxable years beginning on or after December 30, 2008. Paragraph (f)(4)(ii) of this section applies to taxable years beginning on or after January 1, 2010. The rules of paragraphs (e)(2) and (g)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6302–1 in effect prior to December 30, 2008. The rules of paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6,* (f)(4)(i), (f)(4)(iii), and (f)(5) *Example 3* of this section that apply to taxable years beginning on or after January 1, 2006 and before December 30, 2008, are contained in § 31.6302–1T in effect prior to December 30, 2008. The rules of paragraphs (b)(4) and (f)(4) of this section that apply to taxable years beginning before January 1, 2006, are contained in § 31.6302–1 in effect prior to January 1, 2006.

(2) *Expiration date.* The applicability of this section will expire on or before December 23, 2011.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: December 18, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–30582 Filed 12–24–08; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9439]

RIN 1545–BC93

Disclosure of Return Information to the Bureau of Economic Analysis

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to disclosures of corporate tax return information to the Bureau of Economic Analysis (Bureau). The final regulations authorize the IRS to disclose certain items of corporate tax return information to the Secretary of Commerce for purposes of structuring United States national economic accounts and conducting related statistical activities authorized by law. The final regulations facilitate the assistance of the IRS to the Bureau in its statistics programs, require no action by taxpayers, and have no effect on their tax liabilities.

DATES: *Effective Date:* These regulations are effective on December 29, 2008.

Applicability Date: These regulations apply to disclosures made to the Bureau of Economic Analysis on or after December 29, 2008.

FOR FURTHER INFORMATION CONTACT: Charles B. Christopher (202) 622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR Part 301) under section 6103(j)(1)(B) of the Internal Revenue Code (Code). The final regulations contain rules relating to the disclosure of corporate tax return information to the Bureau of Economic Analysis (Bureau) of the Department of Commerce for the purpose of, but only to the extent necessary in, structuring national economic accounts and conducting related statistical activities authorized by law.

Section 6103(j)(1)(B) provides that, upon written request from the Secretary of Commerce, the Secretary of the Treasury shall furnish to BEA return information that is prescribed by Treasury regulations for the purpose of, but only to the extent necessary in, structuring of national economic accounts and conducting related statistical activities authorized by law. Prior regulations under section 6103(j)(1)(B) permitted the disclosure to BEA of return information from corporate returns processed by the IRS's Statistics of Income Division for its corporate sample file.

By letter dated December 18, 2003, the Department of Commerce requested disclosure of certain items of return information obtained from all corporate returns, not just those processed by the IRS's Statistics of Income Division for its corporate sample file. Proposed regulations (REG–148864–03, 2006–2 CB 320; 71 FR 38323) and temporary regulations (TD 9267, 71 FR 38262) were published in the **Federal Register** on July 6, 2006. The Department of Commerce thereafter submitted comments requesting certain technical corrections to the items of corporate return information authorized to be disclosed. No other comments were received, and no public hearing was requested or held. After consideration of the comments received from the Department of Commerce, the proposed regulations, as amended by this Treasury decision, are adopted as final regulations, and the corresponding temporary regulations are removed. See § 601.601(d)(2)(ii)(*b*). These final regulations generally retain the provisions of the proposed regulations with the inclusion of the additional requested items as explained in more detail in this preamble.

Explanation and Summary of Comments

Proposed § 301.6103(j)(1)–1(c)(3) provided an itemized description of the corporate tax return information authorized to be disclosed to the Bureau for the purpose of structuring national economic accounts and conducting related statistical activities required by law. In its comments, the Department of Commerce requested that certain additional items of corporate tax return information that are essential to the Bureau's ability to measure accurately U.S. economic activity be included in the itemized list in the final regulations. Most of the additional items of corporate tax return information to which the Department of Commerce requests access are slightly different variants of the same items authorized in the proposed regulations. The inclusion of these items will enable the Bureau to measure accurately corporate profits, gross domestic product, and other measures of activity in the economy. After consideration of these comments, the Treasury Department and IRS have included the additional requested items in the final regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Robin M. Tuczak, Office of the Associate Chief Counsel (Procedure & Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR Part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.6103(j)(1)–1 is amended by revising paragraphs (c) introductory text, (c)(1), and (e), removing and reserving paragraph (c)(2), and adding paragraph (c)(3) to read as follows:

§ 301.6103(j)(1)–1 Disclosures of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities.

* * * * *

(c) Disclosure of return information reflected on returns of corporations to officers and employees of the Bureau of Economic Analysis.

(1) As authorized by law for purposes of, but only to the extent necessary in, conducting and preparing statistical analyses, the Internal Revenue Service will disclose to officers and employees of the Bureau of Economic Analysis all return information, regardless of format or medium and including edited information from the Statistics of Income sample, of designated classes or categories of corporations with respect to the tax imposed by chapter 1 of the Internal Revenue Code.

(2) [Reserved].

(3) The Internal Revenue Service will disclose the following return information reflected on returns filed by corporations to officers and employees of the Bureau of Economic Analysis:

(i) From the business master files of the Internal Revenue Service—

(A) Taxpayer identity information (as defined in section 6103(b)(6)) with respect to corporate taxpayers;

(B) Business or industry activity codes;

(C) Filing requirement code; and

(D) Physical location.

(ii) From Form SS–4, ''Application for Employer Identification Number,'' filed by an entity identifying itself on the form as a corporation or a private services corporation—

(A) Taxpayer identity information (as defined in section 6103(b)(6), including legal, trade, and business name);

(B) Physical location;

(C) State or country of incorporation;

(D) Entity type (corporate only);

(E) Estimated highest number of employees expected in the next 12 months;

(F) Principal activity of the business;

(G) Principal line of merchandise;

(H) Posting cycle date relative to filing; and

(I) Document code.

(iii) From an employment tax return filed by a corporation—

(A) Taxpayer identity information (as defined in section 6103(b)(6));

(B) Total compensation reported;

(C) Taxable wages paid for purposes of Chapter 21 to each employee;

(D) Master file tax account code (MFT);

(E) Total number of individuals employed in the taxable period covered by the return;

(F) Posting cycle date relative to filing;

(G) Accounting period covered; and

(H) Document code.

(iv) From returns of corporate taxpayers, including Form 1120, ''U.S. Corporation Income Tax Return,'' Form 851, ''Affiliations Schedule,'' and other business returns, schedules and forms that the Internal Revenue Service may issue—

(A) Taxpayer identity information (as defined in section 6103(b)(6)), including that of a parent corporation, affiliate, or subsidiary; a shareholder; a foreign corporation of which one or more U.S. shareholders (as defined in section 951(b)) own at least 10% of the voting stock; a foreign trust; and a U.S. agent of a foreign trust;

(B) Gross sales and receipts;

(C) Gross income, including life insurance company gross income;

(D) Gross income from sources outside the U.S.;

(E) Gross rents from real property;

(F) Other Gross Rents;

(G) Total Gross Rents;

(H) Returns and allowances;

(I) Percentage of foreign ownership of corporations and trusts;

(J) Fact of ownership of foreign partnerships;

(K) Fact of ownership of foreign entity disregarded as a foreign entity;

(L) Country of the foreign owner;

(M) Gross value of the portion of the foreign trust owned by filer;

(N) Country of incorporation;

(O) Cost of labor, salaries, and wages;

(P) Total assets;

(Q) The quantity of certain forms attached that are returns of U.S. persons with respect to foreign disregarded entities, partnerships, and corporations.

(R) Posting cycle date relative to filing;

(S) Accounting period covered;

(T) Master file tax account code (MFT);

(U) Document code; and

(V) Principal industrial activity code.

* * * * *

(e) *Effective/applicability date.* This section applies to disclosures to the Bureau of Economic Analysis on or after December 29, 2008.

§ 301.6103(j)(1)–1T [Removed]

■ **Par. 3.** Section 301.6103(j)(1)–1T is removed.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: December 17, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–30599 Filed 12–24–08; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the asset allocation regulation to adopt interest assumptions for plans with valuation dates in the first quarter of 2009. As discussed below, PBGC has published a separate final rule dealing with interest assumptions under its regulation on Benefits Payable in Terminated Single-Employer Plans for January 2009. Interest assumptions are also published on PBGC's Web site *(http://www.pbgc.gov).*

DATES: Effective January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

These interest assumptions are found in two PBGC regulations: The regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022) and the regulation on Allocation of Assets in Single-Employer Plans (29 CFR Part 4044). PBGC normally updates the assumptions under the two regulations each month in a single rulemaking document. Because of delays in obtaining data used in setting the assumptions for January 2009, PBGC is publishing two rulemaking documents to update the two regulations. This document is a final rule updating the asset allocation

regulation for January through March 2009.

The interest assumptions prescribed under the asset allocation regulation (found in Appendix B to Part 4044) are used for the valuation of benefits for allocation purposes under ERISA section 4044, and for other purposes. When used in conjunction with the mortality tables specified in Appendix A to Part 4044, these interest assumptions are intended to produce benefit values that match as closely as possible the prices charged by insurers in the private-sector group annuity market to annuitize comparable benefits. *See* 70 FR 72205 (December 2, 2005) (preamble to final rule adopting more current mortality tables); 58 FR 5128 (January 19, 1993) (preamble to proposed rule amending PBGC's valuation regulations).

As explained in the preamble to the 2005 amendment (at 70 FR 72205), PBGC determines prices in the private-sector group annuity market based on quarterly surveys of insurers conducted for PBGC by the American Council of Life Insurers (ACLI). Using those surveys, PBGC derives interest factors that, when combined with PBGC's mortality assumptions, provide the best fit for the average market prices obtained from the ACLI surveys.

PBGC's practice has been to recalibrate its interest factors each January based on the two most recent ACLI surveys and subsequent changes in the yield on long-term corporate investment-grade bonds. Between the annual recalibrations, PBGC has used this corporate bond market data to make monthly adjustments to the interest factors.

The recent turmoil in the financial markets has prompted PBGC to further examine its current practice. Based on an examination of historical data, PBGC has concluded that (1) increasing the frequency of the recalibrations from annually to quarterly and (2) basing the interest factors on the ACLI surveys alone can be expected to provide a better fit for average group annuity market prices than current practice.

The recalibration reflected in this rule and future quarterly recalibrations will be based on an averaging of the prices from the two most recent ACLI surveys. The interest factors so determined will remain in effect for three months—in this rule, from January through March of 2009.

Accordingly, this amendment adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during January, February, and March 2009. The interest assumptions that PBGC will use for these purposes (set forth in Appendix B to part 4044) will be 6.02 percent for the first 20 years following the valuation date and 5.48 percent thereafter. These interest assumptions represent a decrease (from those in effect for December 2008) of 1.90 percent for the first 20 years following the valuation date and 1.51 percent for all years thereafter.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during January 2009, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 2. In appendix B to part 4044, new entries for January, February, and March 2009, as set forth below, are added to the table.

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * * *		*		*		*
January 2009	0.0602	1–20	0.548	>20	(1)	(1)
February 2009	0.0602	1–20	0.548	>20	(1)	(1)
March 2009	0.0602	1–20	0.548	>20	(1)	(1)

[1] Not applicable.

Issued in Washington, DC, on this 19th day of December 2008.

Vincent K. Snowbarger,

Deputy Director for Operations, Pension Benefit Guaranty Corporation

[FR Doc. E8–30768 Filed 12–24–08; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–1026]

RIN 1625–AA00

Safety Zone; Saugus River, Lynn, MA

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is creating a safety zone for a portion of the Saugus River in Lynn, Massachusetts as requested by the Massachusetts Highway Department (MHD), to allow for vital repair work to commence on the Route 107/Fox Hill Bridge during the winter and spring months. This zone is necessary to protect mariners from the potential hazards associated with the

work being conducted by the Commonwealth of Massachusetts in making critical repairs to the bridge while it is closed to transiting vessels and vehicular traffic.

DATES: This interim rule is effective December 14, 2008 through May 15, 2009. Comments and related material must reach the Docket Management Facility on or before January 28, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2008–1026 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this interim rule, call Chief Eldridge McFadden, Waterways Management at 617–223–3000. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–1026), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2008–1026'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert USCG–2008–1026 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or United States Coast Guard Sector Boston, 427 Commercial St, Boston, MA 02109 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

The Coast Guard is issuing this interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule, because it is in the best interest of the public to protect against the potential hazards associated with the bridge repair work to be conducted on the Route 107/Fox Hill Bridge. Further, the logistics with respect to that repair work were neither settled, nor provided, to the Coast Guard with sufficient time to draft and publish an NPRM, as such it would be impractical to delay the effective date of this rule as delaying the effective date would limit our ability to prevent, to the extent practicable, the exposure of members of the public to the hazards associated with the bridge repair work.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

A meeting between the Coast Guard, local lobstermen, local marina operators, lobster purchasing agents, and the bridge owner, MHD, was held on September 10, 2008. The owner of the bridge presented engineering evidence of the poor condition of the bridge and the need to perform major bridge repairs during the winter months. It was concluded that in order to keep the bridge operating safely and reliably until the major repairs can commence, the number of bridge openings must be reduced to save wear and tear on the mechanical components. A temporary deviation from standard bridge operation was deemed necessary in order to insure that the bridge continues to operate in a safe reliable manner until the major repairs can be made. No objection to the proposed temporary deviation schedule was voiced by interested parties. In rulemaking supporting that decision, the Coast Guard published a temporary change to

the Saugus Drawbridge Operation regulations (USCG–2008–0969) in the **Federal Register** on October 15, 2008 (73 FR 60954) allowing a deviation of the drawbridge operating guidelines. This regulation, effective from October 15, 2008 through December 15, 2008, allows the bridge to remain closed, opening on signal only on the half hour and hour.

In addition, the long-term repairs may only take place by closing the bridge to both vehicular and vessel traffic, and removing portions of the bridge for work. Massachusetts Highway Department must bring in a large crane barge in order to conduct work on the bridge. This barge will be crossing the river, effectively restricting the use of the river. Frequently moving the barge to allow vessel traffic to pass is contrary to the public interest as it would further delay the bridge repairs well into the summer months, which are the primary boating and fishing seasons in Massachusetts. In order the assist the local lobstermen, MHD proposed to install a temporary dock system on the downstream of the existing bridge to mitigate the impacts of closing the bridge and blocking the channel with a large work barge. During the meeting the lobstermen indicated that the proposed dates for the bridge closure and waterway restriction along with the installation of a temporary dock system would be a good compromise that would satisfy their needs and still allow the rehabilitation bridge repairs to be completed late May 2009.

An additional meeting between the Coast Guard, town officials, harbormaster and MHD took place on December 4, 2008, at which time the MHD agreed to work with affected waterway users to remove the crane barge restricting the waterway on no more than six occasions during the repair process to allow vessels that are able to pass beneath the bridge while in a closed position to do so.

Discussion of Rule

This rule is effective from midnight on December 14, 2008 through midnight on May 15, 2009. The rule establishes a safety zone extending 50 yards upriver from 107/Fox Hill Bridge in the Saugus River in Lynn, Massachusetts. While this safety zones has the practical effect of closing that portion of the waters, because (1) Recreational boating traffic is limited this particular time of year, (2) the MHD has made alternate mooring and docking arrangements for the fishermen which typically dock on the up river side of the bridge, and (3) MHD will remove the crane barge restricting waterway access under the bridge on at least six occasions allowing vessel traffic which may do so to pass beneath the closed bridge, the Captain of the Port anticipates minimal negative impact on vessel traffic. Public notifications will be made prior to and during the effective period via Local and Broadcast Notice to Mariners.

Regulatory Analyses

We developed this interim rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this rule may prevent traffic from transiting a portion of the Saugus River during the bridge repairs, the effect of this rule will not be significant for several reasons: Alternate arrangements for the offload and mooring of fishing vessels have been made, recreational boaters typically have their boats out of the water at this time of year in order to protect them from winter icing, MHD will remove the crane barge restricting waterway access on at least six occasions as requested by a waterway users (during which times vessel operators may request permission to transit through the safety zone promulgated by this rule), and continued notifications will be made to the local maritime community by broadcast and local notice to mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of fishing and recreational vessels intending to transit or anchor in a portion of the Saugus River from midnight December 14, 2008 through midnight on May 15, 2009. This closure will not have a significant economic impact on a substantial number of small entities for the reasons described under the Regulatory Planning and Review section.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). Based on our analysis we have determined that the action to establish this safety zone is included in the category of actions that the Coast Guard has determined will not result in significant individual or cumulative effects on the human environment. In addition, we have concluded that there are no extraordinary circumstances in this case that would limit the use of a categorical exclusion as described under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental analysis and documentation.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**. The Coast Guard will review this environmental evaluation in light of any comments received in response to this notice.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–1026 to read as follows:

§ 165.T01–1026 Safety Zones; Saugus River, Lynn, Massachusetts.

(a) Location. The following area is a safety zone: All waters from surface to bottom of the Saugus River for 50 yards on the upriver side of the Route 107/Fox Hill Bridge.

(b) Enforcement Period. This rule will be enforced from midnight on December 14, 2008 until midnight on May 15, 2009.

(c) Definitions. Designated representative, as used in this section, means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP).

(d) Regulations. (1) In accordance with the general regulations in 165.23 of this part, entry into or movement within this zone by any person or vessel is prohibited unless authorized by the Captain of the Port (COTP) Boston or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP via VHF channel 16 or 617–223–3201 to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP.

Dated: December 10, 2008.

Claudia C. Gelzer,

Commander, U.S. Coast Guard, Acting Captain of the Port Boston.

[FR Doc. E8–30761 Filed 12–24–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 223 and 261

RIN 0596–AB81

Sale and Disposal of National Forest System Timber; Special Forest Products and Forest Botanical Products

AGENCY: Forest Service, USDA.

ACTION: Final Rule.

SUMMARY: The Department is issuing this final rule to regulate the sustainable free use, commercial harvest, and sale of special forest products and forest botanical products from National Forest System lands. The rule is needed to promote sustainability in light of the increased public demands for both timber and non-timber special forest products and forest botanical products over the past 10 years. In many cases, these demands are challenging sustainability, particularly in the most heavily used parts of the National Forest System. This rule will help ensure the continued sustainability of special forest products and forest botanical products.

The rule also revises 36 CFR 261.6 to reflect new free use and personal use authorizations for special forest products and forest botanical products and to specify the types of contractual documents currently used by the Forest Service. In addition, the Forest Service made minor textual clarifications to section 261.6.

DATES: This rule is effective January 28, 2009.

ADDRESSES: The public may inspect comments received at USDA Forest Service—Forest Management, Yates Federal Building, 3rd floor SW wing, 1400 Independence Avenue, SW., Washington, DC. Visitors are encouraged to call ahead to 202–205–1766 to facilitate entry into the building. The public may also inspect comments received via the Internet at *http://wwwnotes.fs.fed.us:81/wo/wospecialproducts.nsf*.

FOR FURTHER INFORMATION CONTACT: Richard Fitzgerald, Forest Service, Forest Management Staff, (202) 205–1753. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following section outlines the contents of the preamble.

Introduction

This final rule regulates the sustainable free use, sale, and commercial harvest of special forest products and forest botanical products from National Forest System lands. Special forest products include, but are not limited to, firewood, post and poles, wildflowers, mushrooms, moss, nuts, seeds, and Christmas trees. Forest botanical products are naturally occurring special forest products including, but not limited to, bark, berries, boughs, cones, grasses, seeds, nuts, mushrooms. Definitions for special forest products and forest botanical products are found in sections 223.216 and 223.277.

The rule is needed to account for increased demand, which threatens the continued sustainability of these products. Given this growing demand and the need to ensure sustainability, the Forest Service determined that regulations dealing solely with special forest products and forest botanicals were required. Under the final rule, the Forest Service will help ensure sustainability by establishing, monitoring, revising, and enforcing sustainable harvest levels for special forest products and forest botanical products. The final rule also governs the appraisal, pricing, advertisement, bidding, and award of special forest product and forest botanical product sales. In addition, the rule provides the types of contracts and permits the Forest Service will use to administer the commercial harvest and free use of special forest products and forest botanical products. This framework, along with direction in Forest Service Handbook 2409.18, chapter 80, will regulate special forest products and forest botanical products.

The final rule adds Subparts G and H to 36 CFR Part 223. Subpart G regulates the commercial harvest and limited free use of special forest products. Authority for subpart G is found in the Multiple-Use Sustained-Yield Act of 1960, as amended (16 U.S.C. 528–531); the National Forest Management Act of 1976, as amended (16 U.S.C. 472a *et seq.*); the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (16 U.S.C. 1600–1614); and the timber sale regulations at 36 CFR Part 223.

Subpart H implements a pilot program for the commercial harvest and limited personal use of forest botanical products, as authorized by the Department of the Interior and Related Agencies Appropriations Act of 2000, (Pub. L. 106–113, Div. B, sec. 1000(a)(3), 113 Stat. 135 (enacting into law sec. 339 of Title III of H.R. 3423)), as amended in 2004 by Section 335 of Public Law 108–108 (''pilot program law''). Subject to certain exceptions, the pilot program law requires that the Forest Service sell forest botanical products for an amount that includes at least a portion of a product's fair market value and a portion of certain costs associated with administering the pilot program (see 16 U.S.C. 528(c)). Subpart H will apply for the duration of the pilot program, which is currently scheduled to terminate on September 30, 2009, unless extended or made permanent by Congress.

The final rule respects treaty and other reserved rights retained by Tribes, and recognizes the importance of traditional and cultural forest products in the daily lives of Indians. Nothing in this rule affects the Forest Service's trust responsibilities or continued government-to-government relations. In fact, the rule will help the Agency meet its obligations to Tribes. Further, the rule encourages Tribes and the Agency to collaborate with one another to reach agreement on specific issues. In addition, the rule provides Forest Service line officers with a regulatory citation for reference whenever gathering by Tribal members is questioned or becomes a law enforcement issue.

The final rule also revises 36 CFR 261.6(f) to include the new free use and personal use authorizations provided by sections 223.239 and 223.279, to reflect the types of contractual documents currently used by the Forest Service, and to make minor textual clarifications.

Background

- Special Forest Products: Commercial Harvest and Sale and Free Use.

Commercial Harvest and Sale

The Forest Service presently sells special forest products from National Forest System lands under the authorities contained in the Multiple-Use Sustained-Yield Act of 1960, as amended (16 U.S.C. 528–531); the National Forest Management Act of 1976 (NFMA), as amended (16 U.S.C. 472a *et seq.*), the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (16 U.S.C. 1600–1614); and the timber sale regulations at 36 CFR part 223. Historically, timber-related products, such as firewood, posts, poles, and Christmas trees, have comprised most of the sales. However, the Forest Service also sells smaller amounts of non-timber special forest products, such as boughs, mushrooms, berries, and floral greeneries. The Forest Service's annual revenue from the sale of special forest products sold from National Forest System lands is approximately $3 million.

Sales of special forest products are relatively small-scale in comparison to timber sales. These products are frequently purchased by individuals or small businesses, and most sales do not exceed $10,000 in value. Generally, sales valued at less than $10,000 are not sold through competitive bidding; rather, a prospective purchaser asks to harvest certain forest products, and either enters into a contract with the Forest Service, or buys a permit that allows the purchaser to harvest the products. Consistent with existing regulations at 36 CFR 223.80, the Forest Service follows competitive bidding procedures for special forest product sales valued at $10,000 or more. The Forest Service presently uses the following standard documents for simple sales which are typically less than $10,000, as identified in Forest Service Handbook (FSH) 2409.18, sec. 53, ex. 01: FS–2400–1, Forest Product Removal Permit and Cash Receipt; FS–2400–3P, Timber Sale Contract for pre-measured products; and FS–2400–4, Forest Products Contract and Cash Receipt. These documents contain standard conditions and allow the parties to add provisions as may be necessary given sale specifics. For complex special forest product sales, the Forest Service uses the standard Timber Sale Contract FS–2400–6. The responsible forest officer selects the appropriate document in light of the value of the sale and other circumstances (see FSH 2409.18 sec. 53 ex. 01 for additional information). The Forest Service will continue to use these standard documents for special forest products and forest botanical products.

Historically, the Forest Service used timber sale regulations and corresponding sections of the Forest Service Manual (FSM) and FSH to sell special forest products. However, these sources are no longer sufficient to oversee the sustainable commercial harvest and sale of these products. Therefore, the Forest Service developed this final rule, which applies specifically to special forest products.

Free Use

This final rule also regulates the limited free use of special forest products. Historically, the Agency has granted limited free use of special forest products to individuals and honored the rights of Tribes with treaty and other reserved rights related to special forest products. This rule continues those historical practices while helping ensure the continued sustainability of special forest products.

• Forest Botanical Products: Commercial Harvest and Sale and Personal Use.

Commercial Harvest and Sale

The pilot program law directed the Secretary to initiate a new program for forest botanical products. Accordingly, the Forest Service established subpart H, which will apply for the pilot program's duration.

The pilot program law provides a mechanism for funding the environmental analyses and administrative tasks necessary for its implementation. Generally, the law requires that forest botanical products be sold for an amount that includes at least a portion of a product's fair market value and a portion of certain costs associated with administering the pilot program. The law specifies that retained funds collected through September 30, 2009, shall be available for expenditure without further appropriation for activities associated with the program through September 30, 2010. Subpart H of this final rule will terminate on September 30, 2009, unless the pilot program is extended or made permanent.

Personal Use

Section 528(e) of the pilot program law (16 U.S.C. 528) directs the Secretary of Agriculture to allow free personal use of a forest botanical product in an amount below that product's personal use harvest level. Under section 223.279 of the rule, the Forest Service will establish personal use harvest levels for each forest botanical product; any personal use below that level will be free. For the duration of the pilot program, personal use of forest botanical products will be conducted in accordance with section 223.279.

• 36 CFR 261.6—Timber and Other Forest Products.

This rule revises 36 CFR 261.6(f) to reflect the new free use and personal use authorizations contained in subparts G and H. In addition, the rule specifies the types of contractual documents currently used by the Forest Service, explains the Forest Service's interpretation of the term ''other forest products,'' and makes minor textual clarifications. These changes were made in response to a comment submitted by a Forest Service law enforcement officer and are a logical outgrowth of the proposed rule.

First, the Forest Service revised section 261.6(f) to incorporate 36 CFR subparts G and H. Section 261.6(f) contains the Forest Service's prohibition against selling or exchanging forest products obtained via free use authorization. Section 261.6(f) required revision to include the free use and personal use authorizations contained in subparts G and H, which did not previously exist. In addition, section 261.6(f) was revised to clarify that ''other forest products'' include special forest products and forest botanical products.

The Forest Service promulgated subparts G and H to help ensure the sustainability of special forest products and forest botanical products. To achieve this objective, subparts G and H, allow, among other things, for the limited free and personal use of these products in a sustainable manner. Specifically, section 223.239 allows for free use of special forest products and section 223.279 allows for free personal use of forest botanical products. However, subparts G and H do not contain prohibitions against selling or exchanging forest products obtained from National Forest System lands at no cost.

Those prohibitions are located at 36 CFR 261.6(f), which this rule revises to reflect the new free use and personal use authorizations provided by sections 223.239 and 223.279. Prior to this final rule, section 261.6(f) prohibited ''[s]elling or exchanging any timber or other forest product obtained under free use pursuant to §§ 223.5 through 223.11.'' This final rule revises section 261.6(f) to prohibit ''selling or exchanging any timber or other forest product, including special forest products and forest botanical products, obtained under free use or personal use pursuant to §§ 223.5 through 223.11, § 223.239 or § 223.279.''

The Forest Service can now use section 261.6(f) to prohibit selling or

exchanging forest products obtained via free or personal use pursuant to subparts G and H. Failing to make these revisions could result in the non-sustainable use of special forest products and forest botanical products, which is contrary to the public interest. In addition, this change is a logical outgrowth of the proposed rule. Therefore, there is no need for notice and comment prior to these changes becoming effective.

Second, the Forest Service combined section 261.6(a) with section 261.6(h). The old section 261.6(a) prohibited cutting or otherwise damaging timber, trees, or other forest products, except as authorized by a special-use authorization, timber sale contract, or Federal law or regulation. The old section 261.6(h) prohibited the removal of timber, trees or other forest products, except as authorized by a special-use authorization, timber sale contract, or Federal law or regulation. The revisions to this rule combine the prohibitions previously contained in paragraphs (a) and (h) into one paragraph (a). The combination of paragraphs (a) and (h) into one paragraph (a) is a non-substantive technical amendment. Therefore, there is no notice and comment prior to these changes becoming effective.

Third, section 261.6(a) and (c)–(f) were revised to include the terms ''special forest products'' and ''botanical forest products.'' Special forest products and Forest Botanical products, as defined in subparts G and H, are the same products the Forest Service has always considered to be ''other forest products.'' However, the Agency revised section 261.6 to make the Agency's interpretation that ''other forest products'' include special forest products and botanical forest products explicit. Because the inclusion of the terms ''special forest products'' and ''forest botanical products'' is both interpretive and a logical outgrowth of the proposed rule, no opportunity for comment is available prior to these changes becoming effective.

Fourth, the terms ''permit,'' ''free-use authorization,'' and ''personal-use authorization'' have been inserted into paragraphs (a), (b), (c), and (e). These revisions are necessary to reflect the new subparts G and H and the various instruments used to sell or authorize removal of timber and other forest products, some of which were developed after issuance of section 261.6. These revisions, which are a logical outgrowth of the proposed rule, update section 261.6 and make technical changes to reflect the contractual instruments currently used by the Forest Service. Consequently, no opportunity for comment is available prior to these changes becoming effective.

Finally, the Forest Service has replaced the term ''timber sale contract'' with ''contract'' throughout section 261.6. This change is necessary to reflect the various instruments the Forest Service uses to sell timber and other forest products, which include timber sale contracts, stewardship contracts, and procurement contracts. These revisions, which are a logical outgrowth of the proposed rule, merely update section 261.6 and make a technical change to reflect the multiple instruments currently used by the Forest Service. Therefore, no opportunity for comment is available prior to these changes becoming effective.

• Tribal Impact Summary.

The Forest Service conducted a preliminary assessment of the impact of this rule on Tribal governments and determined that the rule does have tribal implications; therefore, advanced government-to-government consultation was required.

The Forest Service began consultation efforts prior to publication of the proposed special forest products and forest botanical products rule on October 22, 2007. In April 2004, the Deputy Chief of the National Forest System sent a letter to forest supervisors asking them to contact federally-recognized Tribes in their area and establish early consultation with regard to a future special forest products regulation. The Forest Service provided early consultation regarding draft regulations and Forest Service handbook changes for the management of special forest and forest botanical products prior to publication in the **Federal Register**. The Agency received a substantial number of responses to the request and considered the comments in formulation of the proposed rule.

The proposed rule was published for a 60-day comment period (72 FR 59496) and extended for an additional 30 days based on specific requests from several Tribes (72 FR 72319). Numerous comments were received during both the regular comment period and the extended comment period. All of those comments were considered during formulation of the final rule, and numerous changes were made as a result of those comments. A summary and an analysis of the Tribes' concerns and the changes made to the rule are located in a separate part of this preamble.

The Agency, working within the parameters of existing laws, regulations, and policies, made numerous changes to the rule in response to the concerns expressed by Tribes. However, not all of those concerns can be satisfied through his rule. In addition, several Tribes provided conflicting concerns. Nevertheless, the rule encourages Tribes and the Agency to work in close collaboration with one another to come to agreement regarding important issues.

• Comments on the Proposed Rule and Changes Made in Response.

A 60-day comment period on the proposed rule was initiated on October 22, 2007 (72 FR 59496). The comment period was then extended for an additional 30 days through January 22, 2007 (72 FR 72319). Respondents submitted 151 comments in response to the proposed rule. However, duplicate submissions, such as those sent by both fax and mail, were considered as one response, resulting in 117 total comments. All documents were reviewed and comments were grouped into applicable categories. Responses and a summary of any changes made in the final rule are provided below.

General Comments and Responses for Both Subparts G Special Forest Products and Subpart H Forest Botanical Products.

Confidential or Proprietary Nature of Special Forest Products/Forest Botanical Products Information.

Comment: Many commenters expressed concern about the confidentiality of information provided to the Forest Service in permit applications and other documents. The fact that permits are public documents concerns these commenters. Many of the commenters indicated that they should not be asked to provide information about their harvesting, and in many cases would not provide that information if asked. Both gathering locations and materials harvested can be considered confidential to Tribes and their members, particularly if the material is to be used for healing and/or in ceremonies. Some of the commenters indicated that gathering locations and materials may be closely held, even within families or local communities. Other commenters fear that site information would be obtained by commercial interests that would then over harvest in those areas, compromising both the sacred nature of the places and populations of the plants being used.

Response: Section 8106 of the Food, Conservation and Energy Act of 2008 (Pub. L. 110–234) allows the Forest Service to protect from disclosure information concerning the identity, use, or specific location in the National Forest System of a site or resource used for traditional and cultural purposes by

a federally-recognized Indian Tribe. The Forest Service will comply with all applicable laws concerning disclosure of this type of information, including the Freedom of Information Act, and Section 8106 of the Food, Conservation and Energy Act.

Consultation

Comment: Several commenters indicated that there was inadequate consultation or no consultation provided with regard to this rule.

Response: The Forest Service made significant efforts to consult with federally-recognized Tribes before development of the proposed regulation. Prior to the publication of any draft regulation on special forest products and forest botanical products, the Forest Service began one of its first early consultation efforts as prescribed in FSM 1563. In April 2004, the Forest Service's Deputy Chief, National Forest System, sent a letter to forest supervisors asking them to contact federally-recognized Tribes in their respective areas and establish early consultation with regard to an early draft regulation and FSH revision related to the management of special forest products and forest botanical products. That consultation was one of the first times the Agency consulted with federally-recognized Tribes prior to a major revision or development of a regulatory policy.

Although the Forest Service tried to inform all federally-recognized Tribes about the request for consultation, the Agency cannot independently verify whether every federally-recognized Tribe was informed. However, the Agency was pleased to receive a substantial number of responses to the consultation request and significant consultation took place.

Cultural Significance of Special Forest Products/Forest Botanical Products

Comment: Several comments were received that focused on the importance of special forest products to American Indian culture and expressed concerns that the proposed regulations will do harm to traditional cultural practices and jeopardize cultural survival. Several commenters stated that gathering special forest products has been a part of their Tribe's or indigenous people's lives and practices for millennia. Other commenters noted that access to special forest products on national forests is critical for many Tribes whose land bases cannot furnish the foods, medicines, and other materials necessary to sustain their lives and cultures. Further, others noted Memoranda of Agreement (MOAs) between Tribes and the Forest Service that contain language acknowledging the cultural importance of special forest products to the Tribes and their members. A few comments addressed sacred sites and special places, with one commenter suggesting that the cultural significance of some locations may be incompatible with commercial activity of any sort.

Response: The Forest Service recognizes the important role that special forest products play in the daily lives of many American Indians and Alaska Natives. As noted in other responses to comments, Memoranda of Understanding (MOUs) and MOAs that are consistent with this rule will continue to exist between the Forest Service and Tribes.

These agreements will help maintain traditional cultural practices, as well as culturally important places. Additionally, the Agency understands the importance of close working relationships between the Tribes and local Forest Service line officers. We encourage Tribal members to take advantage of opportunities to educate line officers and Forest Service personnel with whom they interact on a regular basis.

In response to concerns over harvesting in sensitive or sacred areas, this final rule will help ensure the continued sustainability of special forest products and forest botanical products. In addition, Tribes and other concerned parties should work with local Forest Service officers and utilize existing procedures and authorities to help protect such areas.

Application of Fees to Tribes

Comment: Several commenters expressed the belief that permit fees should not be imposed on tribal people. Some believe the imposition of fees would violate treaty laws; others believe the imposition of fees could impose an economic hardship on individual American Indians.

Response: Under the final rule, there are no fees associated with free-use and personal-use permits. This rule does not affect any existing treaty or other reserved rights.

Allocation of Harvest Quantities

Comment: Some commenters stated that tribal harvesting should have a higher priority over harvesting by non-tribal individuals. Other commenters stated that the regulations, as written, are unclear as to whether harvest limits for treaty Tribes would be set at the same levels as for the general public. Others asserted that treaty rights cannot be limited in this manner. Three commenters suggested a hierarchy of priority for harvest of special forest products/forest botanical products in the following order of importance: Traditional harvesting by Tribes and their members; personal use harvesting; and commercial harvesting. One American Indian commenter suggested that Tribes should be accorded first priority in the distribution of seized materials. Another commenter identified the problematic nature of specifying, in advance, quantities to be harvested.

Response: The Forest Service manages the National Forests for multiple purposes, interests, and users, including Tribes, the general public, and commercial concerns. The Agency believes that the final rule strikes the appropriate balance between these purposes and uses, including all parties with an interest in special forest products and forest botanical products.

Further, the final rule respects treaty and other reserved rights retained by Tribes, and recognizes the importance of traditional and cultural forest products in the daily lives of Indians. Nothing in this rule affects existing treaty or other reserved rights, the Forest Service's trust responsibilities or continued government-to-government relations. The final rule does not take away local forest's flexibility to work with Tribes; it provides new tools for successfully meeting resource management objectives, including continued sustainability.

Existing Memoranda of Understanding or Agreement

Comment: Several Tribes who commented on the proposed regulations indicated they have negotiated, or are in the process of negotiating, agreements with the Forest Service, including formal MOUs or MOAs. Several commenters indicated that they enjoy good relationships with the Forest Service and/or national forests in their area, and expressed concern that the regulations, as written, will damage those relationships and effectively extinguish existing agreements. Some said that they believe existing local agreements and regional policies between local Forest Service offices and Tribes would be overridden by this regulation. Nontribal commenters with federal agencies imply that they believe the regulations as written would over-ride an interagency agreement in California that is supportive of American Indian gathering.

Response: The Forest Service agrees that the local flexibility provided by MOUs and MOAs with Tribes have been valuable tools and should continue to be

used to address local tribal concerns regarding the harvest of special forest products and forest botanical products. As a result of the comments, language has been added to section 223.242 making it clear that MOUs and MOAs are allowed under the rule. Such MOU/MOAs must be consistent with the rule. Further, any existing MOAs and MOUs that are inconsistent with this final rule must be made consistent within 24 months from the rule's publication date, which provides sufficient time for any needed revisions.

Permit Requirements for Tribes and American Indians

Comment: Numerous commenters indicated that permits should not be required for American Indians gathering special forest products. In some cases, the commenters seek a waiver that encompasses all American Indians, regardless of federal recognition status. Other commenters requested that specific groups or members of specific groups already covered under existing MOUs remain exempt from permit requirements.

In contrast, several Tribes and one organization representing numerous Tribes supported the issuance of permits as a means of monitoring natural resources. The Tribes in favor of this policy requested that they receive copies of all data collected under a permit program. Another umbrella organization representing Tribes cautioned that instituting a system of permits based on race may alienate individuals who cannot prove their indigenous heritage.

Response: Permits are required to gather special forest products and forest botanical products except for those who qualify under Section 223.240 of the final rule that states ''Tribes with treaty or other reserved rights related to special forest products retain their ability to harvest special forest products in full accordance with existing rights.'' The Agency revised some of the wording in section 223.240 to better address treaty rights. The original wording was construed by some commenters to be inaccurate in the way it referred to rights ''retained'' by Tribes under treaties. The proposed rule stated that Tribes ''* * * may harvest special forest products in accordance with the terms of such treaty rights.'' Some commenters interpreted that language as authorizing the Agency to exercise discretion that would prohibit gathering in a manner that is inconsistent with established treaty rights. The language has been revised to make clear that the Agency recognizes existing treaty and other reserved rights related to special forest products: Consistent with those rights, the Agency may place conditions on the harvest of special forest products to protect the sustainability of the product or to protect the forest. Sustainability of forest products and protection of the forests are a priority for Tribes and the Forest Service.

Further, permits are not required for anyone harvesting or gathering special forest products for personal non-commercial use in amounts below that product's incidental-use harvest level.

The Agency revised some of the wording in section 223.240 to better address treaty rights. The original wording was construed by some commenters to be inaccurate in the way it referred to rights ''retained'' by Tribes under treaties. The proposed rule stated that Tribes ''* * * may harvest special forest products in accordance with the terms of such treaty rights.'' Some commenters interpreted that language as authorizing the Agency to exercise discretion that would prohibit gathering in a manner that is inconsistent with established treaty rights. The language has been revised to make clear that the Agency recognizes existing treaty and other reserved rights related to special forest products; consistent with those rights, the Agency may place conditions on the harvest of special forest products to protect the sustainability of the product or to protect the forest. Sustainability of forest products and protection of the forests are a priority for Tribes and the Forest Service.

Tribal free use provisions are found in sections 223.239, 223.240. Section 223.280 allows national forests to waive fees only for federally-recognized Tribes and Tribes with treaty or other reserved rights seeking to harvest forest botanical products for cultural, ceremonial, and/or traditional purposes. Under certain circumstances, the Forest Service may agree to issue a permit to a Tribe with treaty or other reserved rights related to special forest products for the free use of a specified quantity of special forest products and work with the Tribe to manage the process and conserve the resources. These are the types of discussions that can be held during consultation with regional and/or local officials.

There were a number of commenters representing Tribes without treaty rights who were concerned that the permit requirement would be burdensome to them. The Agency has listened closely to Tribes without treaty rights in the past and will continue to do so in a spirit of cooperation. Memorandums of Understanding and Memorandums of Agreement have been developed to address local concerns on the management of special forest products and forest botanical products. Under Section 223.242, regional foresters may issue supplemental guidance and approve Memorandums of Agreement and Memorandums of Understanding consistent with subparts G and H, to promote local cooperation, issue resolution, and local implementation of these regulations.

The Forest Service understands the concern of the commenter who expressed concern over a permit system based on race. The Forest Service does not discriminate on the basis of race and the Forest Service complies with all laws regarding racial matters.

The Agency encourages Tribes to engage in open dialogue with Forest Service line officers and law enforcement officers in order to agree upon ways to mitigate problems that could develop in this area.

Tribes' Sense of Forest Service Disrespect

Comment: Some commenters stated that the proposed regulations and/or the process through which they were developed display a lack of respect for Tribes and native peoples. Others spoke very highly of the close working relationship between their Tribe and local Forest Service offices. Several commenters suggested that ''respectful consideration'' for Tribes and Indians will be necessary to make these regulations work.

Response: The proposed regulations were not intended as a sign of disrespect for American Indians, Alaska Natives, or other native peoples. The Agency is responsible for managing natural resources on National Forest System lands in a sustainable way that allows for multiple uses, including, among other things, the continuation of cultural and traditional activities of American Indians and Alaska Natives. Our recent history has shown that competing interests, both commercial and non-commercial, have the ability to endanger certain plant and animal species at any given time. There is reason to believe that these types of pressures will continue and will increase. Therefore, these regulations are necessary to protect the resources and to manage them effectively.

The Forest Service intends for these regulations to help develop stronger relationships with Tribes and to support consultation and coordination with Tribes. These regulations, and FSH and FSM revisions, will provide clearer guidance for Forest Service line officers when responding to requests to harvest special forest products from National Forest System land by Tribes.

The Forest Service agrees with the commenters who suggested that respectful consideration of Tribes and American Indians will be necessary to make this regulation work effectively. The Agency is confident that the historically close working relationship between the local Forest Service offices, Tribes, and American Indians will continue, and that all will work closely together to protect the natural resources and traditional cultural practices in their respective areas.

Tribal Sovereignty

Comment: American Indian commenters assert tribal sovereignty, including over ancestral lands, and expect that the Forest Service will honor requirements for government-to-government consultations as it seeks to manage and regulate special forest products/forest botanical products. Commenters also emphasized the need for government-to-government relations.

Response: The Forest Service agrees that government-to-government relations between the Agency and Tribes will continue as required. The Forest Service also believes the rule will help meet its obligations to Tribes.

Legal Status of Tribes

Comment: Some commenters explained the many types of status that Tribes and individuals may have: Federally-recognized and nonfederally-recognized Tribes; treaty and non-treaty Tribes; individuals who do not qualify by blood quantum to hold tribal identity cards even when their relatives do; and descendants of people who did not enroll as Tribal members under the Dawes Act (25 U.S.C. 331), but may be as much as 100% American Indian. Many commenters provided background on the historical processes that lead to this variety of statuses and protest the manner in which the regulations appear to place non-treaty Tribes in a position analogous to that of the non-indigenous public with respect to access to special forest products. Several commenters also indicated that they believe the rule takes away the status of official government-to-government relations with nonfederally-recognized Tribes.

Response: The Forest Service is bound by the statutory direction provided at 25 U.S.C. 479(a)–1 regarding the status of Tribes. This rule does not create any new authority or take away any existing authority with regard to the status of Tribes. Responsible forest officers may consult with other appropriate parties to determine sustainable harvest levels based on historical information (223.219). For example, responsible forest officers may solicit information such as but not limited to amounts harvested, season of harvesting, and yearly variances of amounts available from other parties to help determine sustainable harvest levels.

Traditional Ecological Knowledge & Stewardship Practices

Comment: Some commenters stated that American Indian use and stewardship of special forest products are based on traditions that are thousands of years old. Some noted that the traditional ecological knowledge and stewardship of special forest products by Tribes are acknowledged in scholarly writings, as well as in agreements between Tribes and government agencies, including the Forest Service and the National Park Service. Two commenters suggested that, to the extent that the proposed regulations would eliminate traditional stewardship practices, they would lead to negative ecological impacts. Another stated that this would deprive Tribes of the rights and responsibilities to manage land and resources. Others asserted that the Agency should consult with both American Indian land managers and scientists in management of special forest products on national forests. These commenters believe that Tribes' traditional ecological knowledge and stewardship practices provide coherent models of land, resources, and people's relationships to them that could serve as the basis for sustainable management of special forest products and the habitats on which they depend. Other commenters indicated that some national forests already are actively engaged in managing special forest products with Tribes with positive results.

Response: The Agency recognizes and values the forest stewardship practiced by Tribes, and the traditional ecological knowledge possessed by Tribes. Under 223.219 responsible forest officers are required to consult with Tribes, to the extent appropriate, to determine sustainable harvest levels based on historical information. The Agency intends to ensure that this base of knowledge will be reflected in regional and local agreements. As stressed elsewhere, the Forest Service and Tribes may continue to enter into local agreements consistent with this final rule. Regional Foresters may approve MOUs, MOAs, or other Agency policy, in compliance with these regulations, to promote local collaboration, issue resolution, and local implementation of these regulations.

This rule will not eliminate Tribal stewardship projects nor deprive Tribes of their land management responsibilities. This rule was developed to promote sustainable harvest of special forest products. Accordingly, the Agency welcomes collaboration with holders of traditional knowledge of the land and resources, as well as scientists. As traditional knowledge is often local and place-based, holders of traditional knowledge about special forest products should contact their local Forest Service line officers and staff, and local Forest Service officers and staff should likewise reach out to holders of this knowledge.

Additionally, the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) requires the Agency to engage Tribes and the public in management decisions.

Trade and Commercial Use by Tribes

Comment: Several treaty Tribes expressed a strong belief that the Forest Service does not have the authority to restrict or otherwise regulate treaty-protected gathering for trade or commercial purposes. These Tribes cited case law they believe supports their position. Several commenters noted that trade and commerce are traditional activities of American Indian people, and questioned their apparent exclusion in section 223.240 from the provisions for ''traditional ceremonial, and/or cultural purposes.''

An additional consideration surfaced by these comments is the importance of the definition of commercial and non-commercial gathering in relation to American Indian practices. Commenters noted that exchange of special forest products for other forest resources or for purposes such as healing that involves the use of gathered plants is traditional and wonder if such practices would be deemed to be commercial activities under the terms of the proposed regulations. Several comments suggested that the sale of items made from materials gathered by an individual, for example, a traditional basketweaver's sale of products made from special forest products gathered pursuant to a permit under this rule, should not be considered ''commercial activity.'' Other commenters believe that there are some circumstances under which it would be appropriate to require Tribes and/or Tribal members to pay fees if the Tribes or its members harvest special forest products for commercial purposes (*e.g.*, gathering raw special forest products for bulk sale).

Response: Decisions regarding what constitutes commercial use will be made at the regional level. When local

policies are developed or when consultations are held, regional foresters will need to consider factors such as the type and amount of special forest products that are needed to fulfill requests and sustainability issues.

Treaty Issues

Comment: Some treaty Tribes believe that the regulations as written violate treaty law. Several of their comments cite court decisions in support of that assertion. They noted that treaties have been determined by the courts to be the supreme law of the land, and that the courts have further ordered that treaties be interpreted in favor of Tribes whenever possible. Further, they noted that language in the current regulations suggests a fundamental misunderstanding of treaties with Tribes. Rather, these commenters asserted treaties were and are ''a grant of rights from them—a reservation of those not granted.'' In other words the commenter suggested that rights were conveyed to the United States by Tribes and not the other way around. As a result, the special status conferred by treaties must be respected and provided for throughout the regulations. Several commenters also indicated that the regulations as written eliminate local flexibility to negotiate access to special forest products/forest botanical products on a government-to-government basis. Other commenters indicated that the Forest Service does not recognize in the regulation, that some treaties do not have specific language regarding special forest products.

Response: Section 223.240 has been revised to make clear that nothing in this rule conflicts with any treaties. The Forest Service recognizes that the original proposed wording was construed by reviewers to be inaccurate and understands that Indian treaties are the supreme law of the land and that treaty rights are reserved rights that were negotiated and retained during treaty making through Congressional action. Further, the Forest Service has taken action to change some of the language in the rule to clearly reflect Indian Treaty rights.

In referring to treaty rights, the original language in the rule stated that Tribes ''* * * may harvest special forest products in accordance with the terms of such treaty rights.'' This language was changed to recognize the fact that these gathering rights were never relinquished by Tribes. Further, by removing the word ''may'' the Forest Service is recognizing that the Agency is not in the position of allowing Tribes to harvest what rightfully belongs to them under their treaty rights. Section 223.240 now states that ''A member of a Tribe with treaty or other reserved rights related to special forest products retains his/her ability to harvest special forest products in full accordance with existing rights, including free-use harvest without obtaining a free-use permit.''

Trust Responsibilities

Comment: Commenters believe that the proposed regulations fail to meet the trust responsibilities of the Forest Service. These commenters assert that the Forest Service's trust responsibility includes providing access to special forest products/forest botanical products for Tribes and Tribal members, and also includes protecting against excess commercial harvest of traditionally important plants. One Tribe cited a Forest Service Manual directive it believes supports its position. Several commenters indicated that gathering and gathering sites are central to American Indian culture and spiritual practices, and, therefore, the federal trust responsibility requires the Forest Service to protect them. Some commenters also believe that the Forest Service did not consult adequately with Tribes in the development of the proposed regulations and, in so doing, violated its trust responsibility. Nontribal commenters with federal agencies imply that they believe the regulations as written do not constitute a policy that is supportive of American Indian gathering and would impede the Forest Service's ability to discharge its trust responsibilities in a respectful manner.

Response: This final rule is consistent with the Forest Service's trust responsibilities. Further, as mentioned in the response titled ''Consultation'', the Forest Service consulted with federally-recognized Tribes on matters related to this rule.

Cultural and Spiritual Uses

Comment: Commenters stated that special forest products/forest botanical products have important cultural and spiritual uses by Americans of diverse ethnic backgrounds. One commenter provided examples of cultural uses, while another provided a statement indicative of the personal importance of gathering that could be interpreted as a spiritual experience: ''My time in the forests is the most meaningful time to me, when I can experience the beauty and fruitfulness of our world.''

Response: The Agency recognizes the importance of special forest products and forest botanical products to all users. This rule will help to increase the Forest Service's ability to meet special forest product demand, while assuring a sustainable supply.

Decision-Making Levels

Comment: Several comments discussed including Forest Service organizational levels at which decision-making authority should reside. Some commenters stated that decision-making concerning implementation of the special forest products and forest botanical products regulation should occur at the local or District level. The commenters asserted that local or district personnel are familiar with the local biological and cultural conditions and can develop appropriate programs to safeguard both. Commenters identified several types of decisions they believe should be made at the local level, including which species and types of special forest products and forest botanical products should require active management, harvest limits, and permit information. Commenters also expressed the belief that decisions, especially on exemptions from permit and fee requirements, are best made at the local level. One commenter called for local or regional decision-making within the scope of national guidance. Commenters further asserted that government-to-government consultations with Tribes should occur at the local level. Another commenter provided examples of successful consultations with local stakeholders, including Tribes, which resulted in programs that include a permitting program tied to ongoing monitoring.

In addition, some commenters prefer negotiating specific terms of agreements at the forest or district level. However, others expressed strong concerns about ''too much discretion'' at the local or regional level for interpretation of treaty rights and too much reliance upon local goodwill providing for the traditional gathering needs of non-treaty tribes and individuals.

Response: Decision-making authority for special forest products/forest botanical products has been delegated as follows: (1) The Forest Service Chief has been delegated authority to act for the Secretary of Agriculture in the sale and disposal of timber and forest products, pursuant to 7 CFR 2.60 and (2) FSM 2404.2 delegates the Chief's authority over the sale and disposal of timber and other forest products to the Forest Management Director (Washington Office) and Forest Service line officers (such as regional foresters, forest supervisors, and district rangers) subject to specified reservations and limitations (FSM 2404.28, exhibit 01). Depending upon the scope of the project, responsibility, and/or delegated

authority, and, except as specified in this rule, decisions are generally made at the local forest or district level by the forest supervisor or district ranger, respectively.

Laws and Policies

Comment: The following were cited by commenters as possibly being in conflict with the proposed regulations: (1) Treaty and trust laws; (2) the American Indian Religious Freedom Act; (3) the National Historic Preservation Act; (4) Executive Order 13175; (5) Executive Order 12898; and (6) Public Law 106–113 as amended by 108–108. In addition, commenters cited specific Forest Service policy including: (1) Supplements to the FSM in Region 5 that allow free personal use with permit for tribal members; (2) FSM 1563.02 for Region 5 (Amendment 1500–2007–1, approved July 25, 2007) re: ''regulation of commercial harvests and precedence of personal use over commercial''; (3) North Carolina National Forest (Region 8) supplement r8_nc_2400–2005–1, document 2467 (April 25, 2005), re: ''calculation that ignores market values at the point of harvest''; (4) FSM 1563.1 and FSH 1509.13, Chapter 10, regarding directions on the exercise of regulatory authority and consultation with tribes and honoring of treaty rights and trust responsibilities; (5) FSH 2409.18, 87.17 regarding ''consultation with treaty and non-treaty Tribes prior to the adoption of any harvest plan for areas that include Tribal ancestral ground''; (6) FSM 1563.01f, re: use of cooperative agreements with Tribe; (7) FSM 1563.01(d), re: interpreting treaties as they would have been by the tribes signing them at the time; and (8) FSM 1524 and 1563.03, re: constraints to Forest Service regulation of special forest products/forest botanical products by treaty rights and trust obligations.

Response: The rule is consistent with all applicable laws and regulations. The Forest Service will revise any provisions in the Forest Service Manual or Forest Service Handbook that are inconsistent with this rule.

Income

Comment: Many comments indicated that special forest products and forest botanical products are a source of income for individuals and communities. Some commenters believe the regulations will result in lower incomes and loss of self-employment for thousands of individuals in rural communities. One comment stated that the prohibition on gathering from some national forests already has resulted in ''severe economic hardship.'' Another commenter stated, ''We are trying to make a living without public assistance and without cutting down the trees.'' One commenter does not believe that the scale of the potential negative impact on incomes in rural communities was adequately addressed in the preparation of the regulations.

Response: The rule will have little or no impact on the incomes of those who rely on the gathering of special forest products. The rule was reviewed under U.S. Department of Agriculture procedures and Executive Order 12866 on Regulatory Planning and Review as amended by Executive Order 13422. OMB determined that the rule is not significant and that it will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments.

Implementation of the final rule increases the Forest Service's ability to meet special forest products demand while assuring a sustainable supply. Maintaining a sustainable supply of special forest products should result in members of the public having a better opportunity to obtain special forest products.

Special Forest Products/Forest Botanical Products Industry

Comment: Commenters described the structure of the special forest products/forest botanical products-based industry, and expressed concerns about the rule's effects on the industry. Several commenters disputed OMB's finding that the regulation's potential impact would be lower than $100 million. One commenter stated that economists have estimated the economic value of floral greens and wild mushrooms alone in just three states at $141 million. The same commenter also stated it's highly probable that the aggregate economic value of the hundreds of SFPs harvested commercially in the United States is several billion dollars and that much of that harvest is taking place on national forests. Another commenter remarked that the $3 million value of special forest products revenues from National Forest System lands appears to be a gross underestimate stating that special forest products revenues, based upon the Forest Service's own reporting system, totaled $6,119,947 for Forest Service Region Six.

Another commenter expressed concern regarding the advertisement and bidding processes, under sections 223.227 to 223.232, for the sale of a particular forest product for which the appraised value of the sale is equal to or greater than $10,000 and suggests that the minimum amount be increased to $100,000. The same commenter was concerned that absent any clarification on how appraised values will be determined, that the ''sale'' of a forest product could consist of the entire annual nationwide harvest of a particular forest product, the value of which would, in many cases, very likely exceed $10,000. The following industry generated figures were provided to support that assertion: $30 million for maple syrup in 1997; $2.5 million to collectors of black walnuts in 2002 (estimated); and $340,000—$800,000 to harvesters of wild black cohosh root in each of the three years 2003–2005 (calculated at the 2007 value to harvesters of $2.50/pound based on AHPA's tonnage surveys).

One commenter noted that special forest products/forest botanical products actually support several industries including food, floral, horticultural, and dietary supplements. The commenter noted that in most cases, the supply chain has 3 or 4 steps prior to any significant value-added process: (1) Harvest by self-employed individuals or small groups of family and/or friends; (2) Harvesters sell to local buyers (the point at which the commenter believes fair market value should be assessed); (3) Local buyers sell to regional consolidators (unless they have established direct connections farther up the supply chain); and (4) Regional consolidators sell to a manufacturer. The commenter stated that the largest price increases tend to occur beyond this point (step 4) in the supply chain and provided an example involving black cohosh root. The same commenter also offered to share its industry tonnage survey results with the Forest Service on an ongoing basis as one of the best available measures of volumes and values for 20 special forest products/forest botanical products species. The commenter noted, however, that there is no way to determine what proportion of that volume was harvested on national forests, although it is assumed to be more than $10,000.

Commenters fear that implementation of the regulations, as written, would favor very large businesses, and would result in the industry being restructured in a way that would present an economic hardship for rural communities, low income people, and minorities. More than half of the comments on this specific topic stated that the bidding process would most likely push out very small businesses and self-employed individuals.

Commenters also identified permit prices and access to sufficient amounts

of special forest products/forest botanical products to supply the industry as concerns. Comments suggested that permit costs, if not calculated at a reasonable percentage of the price paid to a permittee's harvesters, could eliminate the harvesting activity as a source of income. In addition, commenters asserted that rising permit prices could ripple upward in the supply chain, resulting in product prices beyond what consumers are willing to pay. Commenters also expressed concern that if access to special forest products/forest botanical products on national forests is shut down, as it has been on some forests, inability to supply product also would harm the industry. This comment was couched in terms of closing down access in the absence of sound scientific information indicating a need to do so. These commenters indicated general support for sustainable harvesting measures.

Response: As stated above, the rule fully complies with all applicable laws, regulations, U.S. Department of Agriculture procedures, and Executive Order 12866 on Regulatory Planning and Review, as amended by Executive Order 13422. Further, the OMB has determined that the rule is not significant, will not have an annual effect of $100 million or more on the economy, and will not adversely affect productivity, competition, jobs, the environment, public health or safety, or state or local governments. The rule itself does not increase or decrease the supply of special forest products or forest botanical products thus does not impact the receipts received by the Forest Service. Further, the rule complies with Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking'' and the Small Business Regulatory Enforcement Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Executive Order. The rule increases the Forest Service's ability to meet increased demand for special forest products, which benefits individuals and small businesses.

Many of the commenters provided values of special forest products based either upon wholesale or retail values of the product. The Forest Service bases its appraised value that it charges for a permit or a contract on a fair market value that reflects the cost to a permittee to collect or cut the product and transport the product to a point that it could be sold. In response to comments regarding appraised values and product prices, the Chief of the Forest Service establishes minimum rates for the sale of special forest products or groups of special forest products pursuant to section 223.221. In addition, the Chief determines the appraised value of special forest products pursuant to section 223.222. Pursuant to sections 223.221 and 223.222, products must be sold at minimum rates or appraised value, whichever is higher. Under section 223.227 the Forest Service generally is required to advertise any sale of special forest products which has an appraised value of $10,000 or greater rather than $100,000 as suggested by one commenter. As there is competition for a lot of these special forest products, advertising them is a fair approach to work with the public.

In the past we have used the timber regulations and Forest Service Forest Management manuals and handbooks as the basis for appraising special forest products. Each sale is appraised per procedures identified in FSH 2409.18, sec. 45. Sales are not appraised based on the nationwide annual value of a particular product, as one commenter suggested. Sales are appraised individually, within each forest. One individual sale may include multiple products. Appraised values, including appraisal points, are determined in accordance with Forest Service policy.

The Forest Service has a minimum charge of $20 for a permit or contract except for the minimum charge for an individual Christmas tree permit. As an example, if the minimum rate for a special forest product is $5 for a particular unit of measure, a permit would allow up to 4 units of that particular product.

Regarding the comments about closing down access to forest product harvesting in the absence of sound scientific information based upon historical and other information, the Forest Service will only close down access to special forest products for reasons including but not limited to: (1) Ensuring public safety; (2) preventing interference with Forest Service and/or commercial operations; (3) ensuring the sustainability of a special forest product; or (4) otherwise protecting National Forest System land. Whenever possible, the Agency will consider scientific information in making determinations about whether to close down access.

Development Process of Proposed Regulations

Comment: Some comments referred to the process used to develop the proposed regulations. Several commenters believe that the regulations as written should be abandoned and a new process should be commenced that involves a substantive public involvement process. Many of these individuals also contend that the regulations should be rewritten to include a requirement for stakeholders to be involved in establishing harvest limits, identifying fair market values, setting permit prices, etc., with some calling for the Forest Service to require training for its personnel on how to conduct such processes effectively. One commenter offered the example of a successful collaborative process that was used by a national forest to develop agreements for managing special forest products/forest botanical products.

Response: The proposed rule included a 60-day comment period, which was extended for an additional 30 days. Over 150 comments were received. All comments received were considered in development of the final rule. Further opportunities for collaboration and participation will occur at the regional, forest, and local level, including, but not limited to, during project planning, environmental analysis, and implementation.

Regulatory Impact Determination

Comment: Commenters believe that there was inadequate review for regulatory impact prior to the proposed regulation's publication. Read together, the comments asserted that a regulatory impact review is required based on at least three of the following reasons:

1. The annual national value of special forest products/forest botanical products exceeds the monetary threshold necessary to trigger the requirement for a regulatory impact review. Some of these comments cite values for the annual harvest of products to support their assertion.

2. The regulations as written would have a substantial impact on incomes in rural communities, which have not been considered.

3. Potential impacts on small businesses, particularly from the proposed bidding process, would be substantial and would effectively restructure the industry.

Many commenters also stated that a NEPA review is required because they believe the regulations are likely to have cultural and ecological impacts. Some requested public release of the data OMB used to determine that there would be no significant impacts. Other commenters stated that the requirement for free or personal use permits would be burdensome for both the public and the Agency and could expose the Forest Service to risk of litigation.

Response: The rule was reviewed under U.S. Department of Agriculture procedures and Executive Order 12866 on Regulatory Planning and Review, as amended by Executive Order 13422. OMB determined that the rule was not significant, would not have an annual effect of $100 million or more on the economy, and would not adversely affect productivity, competition, jobs, the environment, public health and safety, or state and local governments.

The Agency believes the rule actually increases the Forest Service's ability to meet special forest products demand, while assuring a sustainable supply. Maintaining a sustainable supply will benefit individuals and small businesses.

After consideration of the rule under Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' and the Small Business Regulatory Enforcement Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Forest Service determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Executive Order. Further, the proposed rule will have no adverse impact on small business, small not-for-profit organizations, or small units of government.

The Forest Service also determined that the rule would have no direct or indirect effect on the environment. 36 CFR 220.6(d)(2) excludes from documentation in an environmental assessment or impact statement rules, regulations, or policies to establish service wide administrative procedures, program processes, or instructions that do not significantly affect the quality of the human environment. The Department's assessment is that the rule falls within this category of actions, and that no extraordinary circumstances exist that would require preparation of an environmental assessment or environmental impact statement.

Pursuant to FSH 2409.18 section 87.13, the approving officer for the harvest and sale of special forest products must ensure that the actions are consistent with applicable land and resource management plans, including environmental quality standards.

Regarding the comment that the requirement for permits would be burdensome and could expose the Agency to litigation, in the proposed rule, the Agency unintentionally omitted disclosure of a current Office of Management and Budget (OMB) approved information collection for associated permits and contracts; this omission has been corrected and the information now appears in the *Controlling Paperwork Burdens on the Public* section.

Permits and fees are not always required. For example, a person may harvest a forest botanical product or special forest product up to the incidental use harvest level without obtaining a permit. In addition, there are no fees associated with the free and personal use.

Stewardship

Comment: One commenter proposed collaborating with the Forest Service to develop guidelines for good stewardship of special forest products/forest botanical products. Other commenters stated that in many cases their practices enhance local populations of special forest products/forest botanical products. Another commenter believes that the regulations as written would be a barrier to promoting restoration of native medicinal species and their positive ecological outcomes. One commenter asserted that good stewardship is more likely to follow if harvesters are involved in decision-making processes regarding regulation of special forest products/forest botanical products and if they have a long-term stake in these resources. One commenter stated that in several years of working with tribes on traditional management of special forest products/forest botanical products, they had never observed damage by traditional harvesters but have seen ecologically beneficial effects.

Response: The final rule will result in the good stewardship of special forest products and forest botanical products and is not a barrier to promoting restoration of native medicinal species and their positive ecological outcomes. In addition, the Forest Service appreciates and welcomes the many opportunities it will have to work with members of the public throughout the planning, analysis, and implementation of special forest products and botanical forest products projects. We believe these opportunities for consultation and collaboration will ensure sustainability and good stewardship.

Subsistence

Comment: Commenters believe that the rules as written would have a negative effect on people who rely on special forest products/forest botanical products for subsistence. Several of the commenters are concerned that personal use levels set to satisfy what are deemed to be recreational needs will not be adequate for subsistence gatherers and ask that subsistence be identified as a separate category for which harvest limits are set. Some note that this may be an environmental justice issue that should be considered under the terms of Executive Order 12898.

One commenter stated that there are people who are dependent upon subsistence gathering and indicated that special forest products/forest botanical products are an important aspect of subsistence. One commenter indicated that tan oak mushrooms have important subsistence uses in the local community and that its importance and use is not confined to American Indians. Another noted that subsistence gathering is recognized in an MOU between the Forest Service and tribes in several western forests. One individual asserted that the definition of subsistence in a contemporary context must include trade of traditional crafts, arts, etc.

Response: The Forest Service has promulgated this rule in order to promote the sustainable use of special forest products in light of the increased public demands, for both timber and non-timber special forest products, over the past 10 years. In many cases, these demands are challenging sustainability particularly in the most heavily used parts of the Nation's Forest System.

This rule will not interfere with the established rights of any group to harvest or use special forest products. It does provide, however, for the determination and monitoring of sustainable harvest levels and provides a mechanism for increasing or decreasing harvest levels as appropriate based on the monitoring results. This rule does not affect subsistence gathering; it just requires a permit process above the product's incidental-use harvest level. The rule also provides for the contracts and permits that will be used by the Agency to administer the harvest and use of special forest products and forest botanical products. By maintaining sustainability, this rule helps to provide for the continuity of all uses, including subsistence.

Responsible forest officers determine personal-use harvest levels for specific forest botanical products (section 223.279). These levels shall be equal to the amount or quantity authorized for free use under section 223.239(a), which references personal, non-commercial use, rather than recreational needs as one commenter believed.

In response to the commenter asking that subsistence be identified as a separate category for which harvest limits are set, regardless of the product's eventual use, prior to offering a special forest product for sale or free use, the responsible forest officer must determine the product's sustainable harvest level. The Agency does not feel

a separate category is needed for subsistence as subsistence is tied to a product's sustainable harvest level. A special forest product's sustainable harvest level is the total quantity of the product that can be harvested annually in perpetuity on a sustained yield basis. Responsible forest officers are not authorized harvest or free use of special forest products in an amount exceeding known sustainable harvest levels.

There are no environmental justice issues under this rule. The rule provides for free personal, non-commercial use of both special forest products and forest botanical products, under sections 223.239 and 223.279.

The rule allows for regional foresters to issue MOUs and MOAs, consistent with subparts G and H, to promote local collaboration, issue resolution, and local implementation of the rule. The rule also allows for continuance of existing MOUs and MOAs although they must be made consistent with the rule within 24 months from December 29, 2008 or those agreements will terminate.

Subpart G—Special Forest Products

Proposed Section 223 Applicability

Summary of Changes in Proposed Section 223.215 (Final Rule Section 223.215)

No comments were received directly relating to this section.

For clarification purposes, minor wording changes were made to this section and information regarding permit requirements for free use above the incidental-use harvest level was added.

Proposed Section 223.216 Definitions

Summary of Changes in Proposed Section 223.216 (Final Rule Section 223.216)

For clarification purposes, the title of section 223.216 was changed to include special forest products. In response to comments and for clarification, a definition of ''person'' was added. The term ''purchaser'' was replaced with ''person'' throughout the rule to reflect the fact that not everyone harvesting forest products will be purchasing the products through a sale. Some products may be obtained via permit or free use authorization. For clarification, the definition of special forest products was refined in the final rule by inserting the words ''but not limited to'' to clarify that the products identified in the definition are not all inclusive. Further, the reasons for collection were struck from the definition because the Agency did not intend to insert an intent element into the definition.

Comment: Commenters noted that the terms special forest products and forest botanical products are similar and/or confusing, aren't distinctive, do not contain certain species of particular importance (such as, but not limited to, epiphytes, bromeliads, orchids, and ferns), and include products that should not be regulated (such as fence material, mine props, post and poles, shingle and shake bolts, and rails).

Response: The definitions of special forest products and forest botanical products are very similar because forest botanical products are a naturally occurring subset of Special Forest Products. Further, the products mentioned by name in the definitions are not all inclusive. Regarding the commenters' question as to why certain special forest products are regulated, the Forest Service considers posts, poles, rails, shingle and shake bolts, firewood, fence stays, vegas, mine props, and bow staves as special forest products, but not forest botanical products because they do not occur naturally. The Agency has a history of regarding fence material, mine props, post and poles, shingle and shake bolts, and rails, as special forest products and plans to continue to do so. The authority for selling these products is found at 36 CFR 223.1.

Comment: Some commenters expressed the need to define ''fair market value,'' ''appraised value,'' and ''minimum rates'' and wanted these definitions written in such a manner that they were determined at the point of harvest and not on a value added basis. Another commenter requested a definition for the term ''responsible officer,'' particularly in relationship to where the individual is stationed. One commenter noted that the terms ''protect the forest'' or for ''purposes of health and safety'' were not defined and the commenter was concerned that the regional forester would have unlimited discretion over the application of treaty-protected gathering rights to Forest Service lands. Another commenter was concerned that the terms ''threatened'' or ''endangered'' species were not defined and was unclear how or by whom such threat or danger would be determined.

Response: The Forest Service follows the regulations at 36 CFR 223.222, which set forth authorities for determining appraised value of special forest products and 36 CFR 223.278 for forest botanical products. The Forest Service determines fair market value of forest botanical products under 36 CFR 223.278. Per 26 CFR 223.278, the fair market value of a forest botanical product is equal to the appraised value.

The process that the Forest Service has used to determine ''fair market value,'' appraised value, and minimum rates or standard rates for special forest products has historically been based upon the same process noted in the Forest Service manual and handbooks for timber sales. Special forest products, and now forest botanical products, were considered the ''other forest products'' identified in NFMA and in the manual and handbooks.

Minimum rates are the lowest rate that the Forest Service will accept for a product. Standard rates, based upon historical data, are set and used as the lowest rate that the Forest Service will accept for a product when an appraisal is not needed or is not practical for a product. For some products, minimum rates and standard rates may be the same.

Appraised rates are developed to provide a fair market value for a product. Under the rule, valid methods of appraisal include but are not limited to transaction evidence appraisals, analytical appraisals, comparison appraisals, and independent estimates based on average investments. The basic appraisal systems used by the Agency include residual value appraisals (a type of analytical appraisal) and transaction evidence appraisals, which are used depending on the information available. To determine an appraised value, either appraisal system selects an appraisal or marketing point at which a product can be further manufactured or sold to a collector or processor. The appraisal takes into consideration the costs to pick or produce the product and the cost to transport it to the marketing point. The rates that the Forest Service charges does not include any value added to the product after delivery to the appraisal or marketing point.

The Forest Service uses the term responsible forest officer for the official responsible for the particular decision being made. This individual may be stationed at any office (district, forest, regional, or national) depending upon the decision and/or their delegated authority.

The Forest Service uses the terms threatened or endangered Species as defined by the Endangered Species Act of 1973, as amended (16 U.S.C. 1532 *et seq.*).

Commenters expressed concern that the ambiguity of the terms ''protect the forest'' and ''purposes of health and safety'' gives a regional forester unlimited discretion over the application of treaty-protected gathering rights on National Forest System lands. In response, the Forest Service revised section 223.240 to specify that the

Forest Service will only set conditions on the harvest of a special forest product by a Tribe with treaty or other reserved rights related to that special forest product to ensure the product's sustainability or to otherwise protect National Forest System land. In addition, section 223.240 now states that the Forest Service will only prohibit Tribes with treaty or other reserved rights related to special forest products from harvesting that special forest product to protect public health and safety or to ensure sustainable harvest levels. The responsible forest officer has the discretion, on a case-by-case basis, to determine what may be needed to protect public health and safety and to ensure sustainability on National Forest System lands.

No definitions of ''fair market value,'' ''appraised value,'' ''minimum rates,'' ''responsible forest officer,'' ''forest protection,'' ''health and safety,'' or ''threatened or endangered species'' will be added to this subpart.

Proposed Section 223.217 Authority To Dispose of Special Forest Products

Summary of Changes in Proposed Section 223.217 (Final Rule Section 223.217)

No changes were made to this section.

Comment: Some respondents stated that Tribes have vested property interests in the resources, and that the resources are not solely owned by the Forest Service.

Response: The regulations at 36 CFR part 223 govern the sale and disposal of national forest system timber and forest products. This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that this action does not take any private property. Tribes with treaty or other reserved rights retain their ability to harvest special forest products in full accordance with existing rights.

Proposed Section 223.218 Consistency With Plans, Environmental Standards, and Other Management Requirements

Summary of Changes in Proposed Section 223.218 (Final Rule Section 223.218)

Minor changes in wording were made to this section for clarification.

Comment: A number of commenters asserted that the rule needs to undergo National Environmental Policy Act (NEPA) evaluation and that the rule should be consistent with NEPA. Other commenters mentioned forest plans, environmental standards, and questioned the adequacy of or further need to consider/study/include other management standards, including treaty and other tribal rights, Executive Order 12898, the Regulatory Impact Analysis, the United Nations (UN) Convention on Biodiversity, the UN Declaration on the Rights of Indigenous Peoples, and the International Standard for Sustainable Wild Collection of Medicinal and Aromatic Plants (ISSC–MAP) principles.

Response: Although the rule itself has been determined to not require NEPA analysis, the harvest and sale of special forest products, including the subset of forest botanical products, shall be authorized in accordance with all applicable laws, regulations, and policies, including NEPA and forest land management plans on National Forest System lands (reference FSH 1909.15, sec. 31.1b (57 FR 43180; September 18, 1992)).

Responsible forest officers also follow policy found in FSH 1909.15 to determine the level of environmental analysis documentation needed for disclosing the environmental effects of individual programs or projects. During the NEPA process for land management plans and site-specific actions, interdisciplinary team members and the responsible forest officer may consider many sources of data and information.

Proposed Section 223.219 Sustainable Harvest of Special Forest Products

Summary of Changes in Proposed Section 223.219 (Final Rule Section 223.219)

Minor wording changes were made to this section. In addition section 223.219 was revised to specify that forest officers may consult with appropriate parties when determining sustainable harvest levels. This revision was made in response to comments received by the Forest Service. In response to comments, factors were added that the responsible forest officer may consider when making their sustainability determinations and establishing monitoring timeframes.

Comment: Comments included determining sustainable harvest limits specific to species and location because of year-to-year and site-to-site variability, and the need to consider factors including climate change, and geographic scale. Concerns were expressed doubting the Forest Service's resources and/or knowledge base to determine sustainability. Some respondents are concerned that the three-year baseline is not an adequate measure to set sustainable harvest levels because of high variability of many species.

Response: A responsible forest officer is charged with determining the sustainable harvest level for each special forest product prior to offering them for sale or free use. In doing so, responsible forest officers may consider all sources of information and expertise available, including sources outside the Agency, when making their determination. In response to comments, language was added to reflect that ''responsible forest officers will consult with Tribes, to the extent appropriate, to determine sustainable harvest levels based on historical information.'' In addition, the rule now provides that ''responsible forest officers may consult with other appropriate parties to determine sustainable harvest levels based on historical information.'' Regarding commenters' concerns about the Forest Service's ability to determine sustainable harvest levels, the Forest Service has the resources to determine sustainability. The Forest Service has the appropriate knowledge base to comply with the regulation. Where applicable, the Forest Service considers the expertise and knowledge available from other parties, including Tribes. The rule now provides that responsible forest officers may consider factors such as year-to-year and site-to-site variability, climate, weather change, geographic scale, and scientific data available prior to making their sustainability determination and establishing monitoring timeframes (section 223.219(a)). In addition, the Forest Service is required to monitor the effects of harvesting on the sustainability of special forest products, at least once every three fiscal years, or as otherwise established by a regional forester (section 223.219(c)). Such monitoring may include, but is not limited to, on-site examination of the product, including both harvested and non-harvested areas, and a review of past and projected harvest levels to the extent such information is available.

Proposed Section 223.220 Quantity Determination

Summary of Changes in Proposed Section 223.220 (Final Rule Section 223.220)

No comments were received specific to this section.

No changes were made to this section.

Appraisal and Pricing

Proposed Section 223.221 Establishing Minimum Rates

Summary of Changes in Proposed Section 223.221 (Final Rule Section 223.221)

The language was revised to clarify that the Chief establishes minimum rates in addition to establishing methods for setting minimum rates. In addition, language was added to explicitly reference the Forest Service's statutory obligation to sell special forest products for minimum rates or appraised value, whichever is greater.

Comment: Commenters suggested conducting inventories prior to the issuance of permits and including the cost of such inventories in the minimum rate. Others suggested including the full range of stakeholders, including special forest products and forest botanical products harvesters and buyers, and involving the best available science in the process of setting minimum rates (and harvest levels, prices, and waivers). Some respondents believe that the Forest Service lacks the necessary expertise to establish sound minimum rates without the participation of knowledgeable stakeholders. To develop ecologically and economically sustainable and culturally sensitive harvesting limits, prices, and monitoring processes, some commenters believe the Agency will need to include harvesters and buyers in their decision-making process.

Response: For special forest products, the minimum rates are those as explained in the response to comments under section 223.216. For forest botanical products, a fee in addition to the charged rate may be included that would cover the cost of administering the permit/contract. In this instance, the fee may be used for administration of the permit/contract including inventories to determine harvest levels and sustainability levels of forest botanical products. As noted by the commenters, the Forest Service will need help from knowledgeable stakeholders, harvesters, and buyers to provide information relating to cost to produce products along with information concerning the amount harvested and/or available for harvesting. This information will be used in appraisal systems and in the monitoring needs to determine sustainability levels.

The Forest Service uses the Forest Products Free Use Permit (FS–2400–8) for the personal use of products above the product's incidental use harvest level for both special forest products and forest botanical products. These products obtained under this permit can not be resold. For charge permits, under which the material can be resold, the Forest Service uses the Forest Products Removal Permit and Cash Receipt (FS–2400–1) for values up to $300. For values above this amount, the Forest Service uses contracts identified earlier.

Proposed Section 223.222 Appraisal

Summary of Changes in Proposed Section 223.222 (Final Rule Section 223.222)

The language was revised to clarify that the Chief establishes appraised value and establishes methods for determining appraised value. In addition, the inadvertent use of fair market value was replaced with appraised value.

Comment: Some commenters believe that fees should be set in relation to the point of harvest rather than at a later stage in the market chain and harvesters and buyers should be consulted and involved in the process of determining fair market value. Several commenters cautioned that fees should not be set as high as to price products made from special forest products/forest botanical products out of the market. One respondent asserted that if fees are set beyond the financial means of low-income or tribal harvesters, this may result in non-compliance and constitute an environmental justice issue under the terms of Executive Order 12898. This individual suggests that the Forest Service should seek advice from its Office of General Counsel in this regard.

Response: There are no permit fees for personal use and free use. There are no environmental justice issues under this rule. Under section 223.278, the responsible forest officer ensures that the sale price of any forest botanical product includes a portion of the product's fair market value and a portion of the costs incurred by the Department of Agriculture associated with granting, modifying, or monitoring the authorization for harvest of forest botanical products, including the costs of any environmental or other analysis. The fair market value of forest botanical products is equal to the appraised value determined in accordance with section 223.222. The sum of the portions of fair market value and costs making up the sale price must be greater than or equal to the forest botanical product's fair market value.

Proposed Sections 223.223 Advance Payment; 223.224 Performance Bonds and Security Fees; 223.225 Contract, Permit, and Instrument Term; and 223.226 Adjustment of Term of Contract, Permit, or Other Instrument for Force Majeure Delay

Summary of Changes in Proposed Sections 223.223, 223.224, 223.225, and 223.226 (Final Rule Sections 223.223, 223.224, 223.225, and 223.226)

Minor wording changes were made to sections 223.223 for clarification purposes. The word ''purchaser'' was replaced by ''person'' in section 223.223 for consistency with the definition of ''person'' added to section 223.216. Permits were inadvertently included in section 223.226 of the proposed rule. However, permits do not have force majeure. Thus, the word permit was removed from section 223.226 in the final rule. In addition, the finding regarding substantial public interest was deleted as this finding does not apply to force majeure extensions. The titles to 36 CFR 223.225 and 223.226 were changed slightly for clarification purposes.

Comment: Some commenters expressed concern that performance bonds and security fees would be beyond the reach of many native peoples. Others contend the rule should allow contracts with federally-recognized tribes to exceed 10 years. Additional commenters expressed a desire to place some areas within the national forests off limits to commercial activities, including wilderness areas, roadless areas, sensitive areas, areas with archaeological resources, and culturally significant and/or traditional religious areas. One commenter felt that provisions dealing with sales contracts, sales advertising, and performance bonds and security fees would be applied to all businesses, without regard to differences in size class, volumes harvested, or ecological impacts, and that, as a result, small businesses would endure a financial burden that may be borne more easily by large businesses.

Response: Under section 223.224, a contract, permit, or other authorizing instrument for the sale of special forest products may require a person to furnish a performance bond or other security for satisfactory compliance with its terms. Under 223.216, a person is defined to include any individual, partnership, corporation, association, Tribe, or other legal entity.

Sale contracts, by law, may not exceed 10 years in duration, unless there is a finding by the Chief that better utilization of the various forest resources (consistent with the

provisions of the Multiple-Use Sustained-Yield Act of 1960) will result. The disposal of special forest products must be consistent with applicable land management plans (36 CFR 223.218). Land management plans consider the effects of various land management activities on all resources, including, but not limited to, wilderness areas, roadless areas, sensitive areas, areas with archaeological resources, and culturally significant and/or traditional religious areas.

Effects on small entities and small business concerns were considered in light of Executive Order 13272. The Forest Service determined that the rule will have no adverse impact on small business, small not-for-profit organizations, or small units of government.

Proposed Sections 223.227 Sale Advertisement; 223.228 Contents of Advertisement; 223.229 Contents of Prospectus; 223.230 Bid Restriction on Resale of Incomplete Contracts, Permits, or Other Instruments; 223.231 Bidding Methods; and 223.232 Disclosure of Relation to Other Bidders

Summary of Changes in Proposed Sections 223.227, 223.228, 223.229, 223.230, 223.231, and 223.232 (Final Rule Sections 223.227, 223.228, 223.229, 223.230, 223.231, and 223.232)

Minor wording changes were made to sections 223.227, 223.229, 223.230, 223.231 and 223.232 for clarification purposes.

Comment: Commenters expressed objections to a bidding system or process for special forest products/forest botanical products, and felt that a bidding system or process would place very small enterprises at a disadvantage and likely drive them out of business. Others call for set asides for very small businesses. Additional commenters asserted that any contracts, advertising, bonds, and security fees should be structured in relation to market conditions, harvest quantities, and ecological impacts. A few called for harvesters and buyers to be involved in developing appropriate sales processes. One commenter suggested that only very large-scale, potentially damaging harvests should require the contracting processes set forth in the regulations.

Another commenter felt that the appraised value of $10,000 is too high a trigger for the advertisement process given the market value of many of the products that might be sold and that this threshold should be set at a lower value.

A different commenter believes that the Forest Service ''is misinterpreting its statutory responsibility under the pilot program law,'' asserting that the 2004 legislation requires the Agency to use a bidding process as one means of establishing fair market value for forest botanical products during the pilot program. The commenter believes that this does not constitute a mandate to institute a bidding process for special forest products like that used for timber.

Many comments stressed that where treaties exist, treaty terms prevail and tribes cannot be subject to the provisions of this section or any others that contravene guaranteed rights. The award process should prioritize sales to tribes and/or indigenous people for commercial harvests let on tribes' ancestral lands. Some respondents want to be allowed to purchase product sales for conservation purposes, that is, for the express intent not to harvest.

Provisions regarding allowable harvesting techniques should be strengthened with allowable techniques specified in contracts. For example, where appropriate, the contracts should adopt state prohibitions against certain berry harvesting techniques.

Response: Most special forest products have been sold on permits and small sales to individuals or small companies. Large business has not purchased much of the sales for special forest products in the past. The Small Business Administration sets the size class for purchasers but to-date a need has not been demonstrated that special attention is needed to protect the individuals purchasing special forest products. Market conditions, available harvest quantities, and ecological impacts all are considered in the appraisal and contracting processes. Where appropriate, information is obtained from harvesters and buyers to develop the information needed for the appraisals and for determining sustainable harvest levels.

One commenter felt that $10,000 is too high a level to trigger the advertisement process. The Agency agrees and when there is either competition for a product or the product availability is scarce, the Forest Service may advertise the product. A commenter noted that bidding might be one way to determine fair market value. The Agency agrees and this is part of the transaction appraisal system that the Agency uses. As to prioritizing sales, this is a local concern that needs to be determined on a case-by-case basis based upon treaty or other reserved rights.

Another commenter suggested that a person be able to purchase special forest products and then not have to harvest the product as a means for environmental protection. The Forest Service disagrees in that the intent of the special forest products program is to provide products to the American public. There are sufficient other means to protect the sustainability of a product such as harvesting only within the sustainable harvest levels.

In response to the comment regarding bonding, in accordance with 36 CFR 223.224 and Forest Service policy, sales contracts, permits, or other authorized instruments may require the purchaser to furnish a performance bond or other security.

This rule honors and recognizes the historical treaty and reserved rights retained by Indian tribes, and it recognizes the importance of traditional and cultural forest products in the daily lives of Indians.

When preparing appropriate contract or permit instruments, forest officers may add approved special provisions and appropriate other conditions, regarding proper harvesting techniques, per section 223.239.

Proposed Sections 223.233 Award to Highest Bidder and 223.234 Determination of Purchaser Responsibility

Summary of Changes in Proposed Sections 223.233 and 223.234—(Final Rule Sections 223.233 and 223.234)

In Section 223.233, minor word changes were made for clarification purposes. Specifically added the word bidder to 233(a)(2)(ii) so that it now reads ''* * * next highest qualified bidder'' as the term bidder was inadvertently left out in the proposed rule. Also clarified 223.233(a)(2)(iii), as the proposed rule referenced ''conditions of the sale'' and the final rule now references ''conditions in the sale's prospectus'' to reflect what document these conditions are found in.

In section 223.234, minor word changes were made for clarification purposes. The word purchaser was dropped from the title as the section also pertains to persons. The word person was used in 223.234(a) in place of the term purchaser to reflect the fact that not everyone harvesting forest products will be purchasing the products through a sale; some products may be obtained via permit (or even free use under section 223.239). The term declared high bidder was used throughout the section in place of the terms purchaser and prospective purchaser, as appropriate, because the declared high bidder on a contract is a contractor, but a declared high bidder on a permit is a person.

In section 223.234(6) regarding satisfactory performance, the agency

reference was changed from Forest Service to U.S Government, as these same persons could be currently working on other federal ownerships as well.

Section 223.234(c) was added to recognize that in some instances the declared high bidder may be relying on affiliates for financial backing and thus, the responsible forest officer needs to consider the affiliates possible past performance and integrity in regards to how they may affect the declared high bidder's ability to meet the applicable standards for responsibility.

Comment: The one commenter recommended that the Forest Service consider the use of best value criteria, rather than highest bidder, for the sale of special forest products because their experience has shown that best value criteria leads to more competent contractors and provides benefits to local communities.

Response: Historically the Forest Service has relied upon the timber regulations, including authorized bidding methods and award to highest bidder, for the sale of timber and other forest products including special forest products. The Forest Service does use best value awards under the stewardship contracting authority authorized under Section 323 of Public Law 108–7 (16 U.S.C. 2104 Note, as revised February 28, 2003 to reflect Sec. 323 of H.J. Res. 2 as enrolled). The stewardship contracting authority grants the Forest Service authority until September 30, 2010, to enter into stewardship contracting projects for up to 10 years with private persons or public or private entities, by contract or by agreement, to perform services to achieve land management goals for the national forests or public lands that meet local and rural community needs. A stewardship contract or agreement could potentially include timber or special forest products.

Proposed Sections 223.235 Unilateral Delay, Suspension, or Modification of Contracts, Permits, or Other Instruments Authorizing the Sale of Special Forest Products; 223.236 Unilateral Termination; and 223.237 Request by Purchaser for Delay, Suspension, Modification, or Termination

Summary of Changes in Proposed Sections 223.235, 223.236, and 223.237 (Final Rule Sections 223.235, 223.236, and 223.237)

Minor wording changes to sections 223.235 through 223.237. The word person was used in place of the term purchaser to reflect the fact that not everyone harvesting forest products will be purchasing the products through a sale; some products may be obtained via permit. The word purchaser was dropped from the title of section 223.237, as the section also pertains to persons.

Comment: One commenter believes the belief that the Forest Service needs authority to suspend or terminate contracts in order to mitigate harm that has already been done, or prevent harm that might result following an unanticipated natural disaster such as a fire. Another commenter felt that a 10-year term was entirely too long to issue a commercial permit without the Forest Service having any recourse to pull a permit if resource damage is being done.

Response: The Forest Service already has the authority to suspend, modify, or terminate contracts to prevent or mitigate harm including that from an unanticipated natural disaster, under 36 CFR 223.235 and 223.236.

Proposed Sections 223.238 Free Use Authorization to U.S. Army, Navy, and Air Force and 223.239 Free Use by Individuals

Summary of Changes in Proposed Sections 223.238 and 223.239 (Final Rule Sections 223.238 and 223.239)

No changes were made to section 223.238.

Title and minor word and format changes were made to section 223.239, for clarity. The format of section 223.239 was restructured to provide ease of interpretation and continuity including clarification regarding when permits are or are not required. In addition 223.239(e) was added to reflect the treaty or other reserved rights regarding free use without a permit. Further, 223.239(f) was added to provide opportunities, upon request of the governing body of a Tribe.

Comment: Some commenters are concerned about the implications of the free use regulations, as written, on regional and national forest level relations with tribes. These commenters urge that line officers at local and regional levels be given the latitude to develop and honor agreements with local traditional gatherers. One commenter asserted that the Forest Service should consult with tribes prior to designating free use areas to avoid culturally sensitive areas. Another commenter noted that the provision to allow denial of harvest ''to otherwise protect the forest'' is too broad, although there is support for local flexibility. One commenter suggested that if free use permits are required, these should be issued to American Indians on an annual basis and cover the full range of items harvested.

Many comments focused on the feasibility of addressing all the species and materials that are harvested in national forests and/or the capacity of the Agency to do so. These comments implicitly and explicitly suggested there is a strong distinction between large-scale commercial harvests and the types of activities that might be included under the terms of these sections, which is not reflected in the regulations as written. Commenters expressed strong concerns about the implications and logistics of implementing these sections. These commenters believe that a very large number of species and materials are harvested in national forests, mostly in small quantities and that the Agency does not have the capacity to write permits for every one of these species and materials and indicated that requiring regions to do so would negatively impact their other functions. The commenters also are concerned about the feasibility or reasonableness of monitoring every species and the material gathered, given the generally small harvest quantities. They feel that setting free use harvest levels is problematic and asked who would make the determination(s).

Another commenter noted that motivations and volumes needed for recreational collection, subsistence, and cultural observance are all very different. If free use harvest levels are set at what are considered to be appropriate levels for recreational collecting, there will be inadequate material available for subsistence and cultural observance.

Some commenters felt that subjecting free use permits to the same requirements as commercial permits would be ''excessive and unenforceable.''

Another commenter stated that if the regulations are implemented, a free use permit system and designated free use areas will be essential to the public's continued ability to engage in traditional gathering.

One commenter wanted to know the frequency with which one would have to obtain a free use permit, the items and amounts that would be covered, and where and when one would be required to get a permit.

Another commenter was concerned that exempting American Indians from free use permit requirements could lead to actions that would violate the Agency's racial profiling directives.

Response: Regional foresters are encouraged to resolve issues concerning the granting of permits to tribes, racial profiling, and implementation of these

regulations through the use of locally based partnerships, supplemental guidance and collaborative projects. Further discussion regarding agreements has already been addressed in the comment section titled ''Existing Memoranda of Understanding or Agreement.'' In addition, compliance with Executive Order 13175 and Forest Service policy (FSM 1560) regarding consultation and coordination with Tribal Governments is required. Further discussion regarding consultation that took place has already been addressed in the background section titled ''Tribal Impact Summary.''

Special Forest Products must be offered for sale or free use in a manner that maintains these products on a sustainable basis. An analysis, prior to the issuance of a contract, permit, or other authorized instrument, is required to determine the effects on the sustainability level if a special forest product is harvested and sold, or provided for free use, and to determine whether there is sufficient information to establish a sustainable sale or offer level. The responsible forest officer shall also determine personal use harvest levels, which shall be consistent with sustainable harvest levels. Issues concerning amounts to be harvested under a permit, duration of permits, and the type of products authorized for harvesting under a permit will be considered when establishing sustainability levels of a particular product. All such decisions shall be made by the responsible forest officer under various sections of the rule including sections 223.219, 223.239, and 223.279.

Regarding permit requirements for free use versus commercial use, under section 223.215, a commercial sale of special forest products shall be governed by a contract, permit, or other authorizing instrument. Free use above the incidental-use harvest level shall be conducted under a permit, unless otherwise provided.

The forest officer may deny harvest of special forest products to protect public safety, prevent interference with Forest Service and/or commercial operations on a forest, ensure the sustainability of a special forest product, and to otherwise protect National Forest System Land.

It was never our intent to require a permit for every cone, berry, or nut, and particularly for personal, non-commercial use. Therefore, section 223.239(b) has been revised to allow free use and personal use without a permit up to the incidental use harvest level. Incidental use harvest levels are not recreational harvest levels, as one commenter suggested. The incidental use harvest level covers small amounts of special forest products, such as cones, mushrooms, berries, acorns, black walnuts, or medicinal roots. Any free use of a special forest product that does not have an incidental-use harvest level is subject to the permit requirements under section 223.239. Section 223.239(b) now provides that ''[n]o permit is required for the free use of a special forest product at or below that product's incidental use harvest level, which shall be determined at the discretion of the Regional Forester or a Subordinate Officer.''

The Agency has the capacity to address all the special forest in the National Forest System. Not every special forest product is found on every national forest. The regulations provide regional foresters discretion regarding determining free use without a permit up to the incidental use harvest levels. Also, the regulations allow forest officers to set conditions or deny free use harvest of a special forest product for a number of specified reasons. The free use regulations in section 223.239 are for personal, non-commercial use rather than large scale commercial harvests as noted by one commenter. Regarding feasibility or reasonableness of monitoring special forest products, although monitoring of established harvest levels is required (223.219(c)) the required ''at least once every three fiscal years'' time frame may be ''or as otherwise established'' by the regional forester (223.219(c)).

Finally, nothing in the final rule will result in Forest Service law enforcement officers engaging in racial profiling.

Comment: One commenter, a law enforcement officer, expressed concern about the 36 CFR 261.6 regulations. The commenter was concerned that the existing regulations prohibit the sale or exchange of timber or other forest products obtained under free use would not have been interpreted as including special forest products or forest botanical products.

Response: The rule revises 36 CFR 261.6(f) to reflect the new free use and personal use authorizations contained in subparts G and H. In addition, the rule specifies the types of contractual documents currently used by the Forest Service, explains the Forest Service's interpretation of the term ''other forest products,'' and makes minor textual clarifications. The final rule makes these changes as discussed in the preamble section titled ''36 CFR 261.6—Timber and other forest products.''

Proposed Section 223.240 Indian Tribes and Treaty and Other Reserved Gathering Rights

Summary of Changes in Proposed Section 223.240 (Final Rule Section 223.240)

Title and minor wording changes for clarification purposes. In response to comments, we changed the wording that ''any decision restricting tribal off-reservation treaty rights needs to be well documented'' to ''Regional Foresters will provide a Tribe with treaty or other reserved rights related to special forest products that is prohibited from harvesting a special forest product, with written documentation supporting the decision.'' This final rule is consistent with the Forest Service's trust responsibilities. Further, as mentioned in the response titled ''consultation,'' the Forest Service consulted with federally-recognized Tribes early on matters related to this rule.

Comment: A commenter objected that the section-by-section discussion introduced significant elements not included or evident in the text of the regulations themselves, particularly with regard to Tribes and tribal access. Another commenter suggested that principles three and four of the International Standard for Sustainable Wild Collection of Medicinal and Aromatic Plants (ISSC–MAP) may be useful in modifying this section. Those principles are: Principle 3—Complying with Laws, Regulations, and Agreements and Principle 4—Respecting Customary Rights.

Response: The section-by-section analysis in the proposed rule did not introduce any new significant elements. The section-by-section analysis was only intended to further explain the proposed rule. We appreciate the comment about the ISSC–MAP information.

Proposed Section 223.241 Disposal of Seized Special Forest Products

Summary of Changes in Proposed Section 223.241 (Final Rule Section 223.241)

Minor word and format changes were made to this section. The list of parties to whom free use of seized products may be made available, was eliminated. The proposed rule appeared more restrictive and change was made as the proposed rule language unintentionally limited the parties to whom disposal of seized special forest products may be made available and also unintentionally appeared to place a priority order to the parties listed.

Comment: Some commenters expressed the sentiment that it is wasteful to destroy seized special forest products/forest botanical products. Others indicated that Tribes should be included in the list of institutions and/or given preference in the disposition of seized special forest products/forest botanical products. One respondent calls for the inclusion of provisions for Agency accountability in relation to seizure of special forest products/forest botanical products, particularly when it occurs in remote areas. Specifically, the commenter states that ''identities of the chain of control of evidence must be made available to defendants, and defendants must be given a written receipt listing the exact weight and a written description of the material confiscated, including containers, fasteners, and carrying devices.'' Another commenter believes that the list of criteria for seized material that cannot be disposed of is too broad and should be limited to species listed under the Endangered Species Act list or listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Response: The Forest Service may make seized products available for free use or sale rather than destroy them. The proposed rule appeared more restrictive and change was made as the proposed rule language unintentionally limited the parties to whom disposal of seized special forest products may be made available and also unintentionally appeared to place a priority order to the parties listed. All parties, other than the person who collected the products illegally, and in any priority order may be considered by the Forest Service when making seized products available. The Forest Service is not authorized to sell or dispose of seized special forest products that are (1) listed or proposed for listing as threatened or endangered under the Endangered Species Act, (2) identified as prohibited for sale or trade under the Convention on International Trade in Endangered Species (CITES); or (3) listed on the regional forester's sensitive plant list, species of concern or interest, or species of interest list.

Regarding the chain of custody comment, products harvested illegally remain the property of the United States and are recorded in the Law Enforcement Officer's evidence log.

Proposed Section 223.242 Supplemental Guidance, Memorandum of Agreements and Memorandum of Understandings

Summary of Changes in Proposed Section 223.242

This section was added to the final rule in response to numerous comments regarding the potential need for supplemental guidance, memorandums of understanding, and memorandums of agreement for effective implementation of the final rule. The Forest Service agrees that supplemental guidance and other agreements are important tools that may be helpful to promote local collaboration, issue resolution, and local implementation of these regulations. Existing Memorandum of Agreements and Memorandum of Understandings will be allowed to continue but must be made consistent with subparts G and H within 24 months from December 29, 2008 or those agreements will terminate. The period of 24 months was chosen to provide sufficient time for review and consultation with Tribes or discussions with other agreement parties in the revision process.

Subpart H—Forest Botanical Products

Proposed Sections 223.275; Establishment of a Pilot Program; 223.276 Applicability; and 223.277 Definitions

Summary of Changes in Proposed Sections 223.275, 223.276, and 223.277 (Final Rule Sections 223.275, 223.276, and 223.277)

Minor word changes were made to section 223.275 that clarify the pilot program's duration. In addition, minor word changes were made in sections 223.276 and 223.277 for clarity.

Comment: A few commenters asked for clarification regarding the two dates presented in the discussion of the forest botanical products pilot program (September 30, 2009 versus September 30, 2010).

Response: The Secretary of Agriculture may collect fees under the pilot program authority through September 30, 2009, when the program terminates unless extended or made permanent by Congress. Collected funds may be spent on items authorized by the pilot program through September 30, 2010, as identified in section 223.282, and authorized by 16 U.S.C. 528.

Proposed Section 223.278 Collection of Fees

Summary of Changes in Proposed Section 223.278 (Final Rule Section 223.278)

Language was added to this section to clarify that the fair market value of forest botanical products equals the appraised value determined in accordance with section 223.222. In addition, the title of this section was changed for clarity.

Comment: Commenters are generally supportive of charging fees for commercial harvest of special forest products/forest botanical products on national forests, but did not agree with fees for personal harvest or for harvesting by Tribes and American Indian individuals. Commenters are concerned that if fees are charged, they be set at appropriate levels. Some commenters suggested that fees be set at 3% of a product's value at the point of harvest. Many commenters stated that the Forest Service must or should consult harvesters (in particular), buyers, and/or their representatives in this and all decision making processes required by the proposed regulations. Respondents also stated their ''belief that the proposed rule does not reflect the intent of Congress's 2004 pilot program amendments, which only require the Forest Service to collect a portion of the fair market value and program administration costs; the original legislation required collection of not less than fair market value and all costs.

Response: Per section 223.279 of this rule, a person may harvest a forest botanical product from National Forest System lands free of charge for personal, non-commercial use up to the product's personal-use harvest level. In addition, a permit is not required for personal use below a product's incidental use harvest level, which shall be determined at the discretion of the regional forester or a subordinate officer.

In response to the comment that fees should be set at 3% of the product value, the standard rate established must equal or exceed the minimum rates (see section 223.221; FSM 2431.21b; and FSM 2431.31c). Forest supervisors are directed to set standard rates at the pre-harvested fair market value of the product, 10 percent (rather than the 3 percent suggested by the commenters) of the wholesale market value, or the minimum rate, whichever is higher (FSH 2409.18, 87.3).

Fees are required to be charged for all forest botanical products to recover a portion of the fair market value and a portion of the costs associated with

granting, modifying, or monitoring the harvest of forest botanical products through permits, contracts, or other authorized instruments issued for such products. However, under section 223.280, the Forest Service waives the collection of fees otherwise required, pursuant to section 223.278, for federally-recognized Tribes seeking to harvest forest botanical products for cultural, ceremonial, and/or traditional purposes. Such purposes must be non-commercial, and any such harvest may be conditioned or denied for reasons similar to those provided in section 223.240 of subpart G. This final rule also waives fees for Tribes with treaty or other reserved rights seeking to harvest forest botanical products for cultural, ceremonial, and/or traditional purposes in accordance with such treaty or other reserved rights. Such purposes must be non-commercial, and any such harvest may be conditioned or denied for reasons similar to those provided in section 223.240 of subpart G. Tribes with treaty or other reserved rights were added to the final rule to recognize their rights to forest botanical products for cultural, ceremonial, and/or traditional purposes in accordance with such treaty or other reserved rights.

Regarding the commenter who stated their ''belief that the proposed rule does not reflect the intent of Congress's 2004 pilot program amendments, which only require the Forest Service to collect a portion of the fair market value and program administration costs, the responsible forest officer ensures that the sale price of any forest botanical product includes a portion of the product's fair market value and a portion of the costs incurred by the Department of Agriculture (section 223.278). The Forest Service determines the costs incurred by the Department of Agriculture associated with granting, modifying, or monitoring the authorization for harvest of forest botanical products, including the costs of any environmental or other analysis (section 223.278). The Forest Service only has to collect the sum of the portions of fair market value and costs which then make up the sale price of the forest botanical product and which must be equal to or greater than the forest botanical product's fair market value (section 223.278). Per Section 223.278, the fair market value of forest botanical products is equal to the appraised value, and appraised values of forest botanical products are determined in accordance with section 223.222.

Proposed Section 223.279 Personal Use Harvest Levels and Waiver of Fees

Summary of Changes in Proposed Section 223.279 (Final Rule Sections 223.279 and 223.280)

For clarification, this section 223.279 was split into section 223.279 Personal use, and section 223.280 Waiver of fees and/or fair market value, and minor word and format changes were made. In addition, Tribes with treaty or other reserved rights were added to recognize their rights to forest botanical products for cultural, ceremonial, and/or traditional purposes in accordance with such treaty or other reserved rights.

Comment: Comments included (1) waivers should be provided to all federally-recognized Tribes (regardless of applicability of treaty and reserved rights), (2) treaty rights do not limit harvesting to non-commercial purposes, and (3) permits and fees may not be (or should not be) required for the exercise of treaty rights. Other commenters expressed the belief that personal use harvesting by American Indians is different from that of the general public and should be provided for differently by the regulations as a whole. Those commenters described several key aspects of traditional gathering that may not be accommodated by the current regulations. These aspects include the frequency of traditional gathering, which, for many species and materials, can occur year round or spontaneously in conjunction with other activities, and the inability to predict harvest conditions such as location and timing in advance. Further, commenters noted that traditional gathering is often a group activity and because of cultural norms and roles, ''personal use'' gathering often involves harvesting amounts to share with others and/or provide for community functions.

At least one commenter is not opposed to requiring free permits for American Indians. Others suggested (1) issuing American Indians annual permits, for the entire traditional gathering area that apply to the full range of species and materials harvested, (2) making tribal, family and/or group permits available, and (3) ensuring that allowable harvest levels accommodate American Indian cultural norms.

Several commenters questioned the methods for setting personal use levels, suggesting that doing so is culturally dependent and requires a knowledge base that forest Service personnel rarely possess. One commenter asserted that they should determine what qualifies as traditional gathering, while another commenter stated that they should be involved in setting personal use levels for non-treaty harvests. A commenter expressed concern that personal use harvest limits will be set for recreational use levels and suggested that subsistence be established as a separate harvest level category.

Another commenter stated that legislation provides for broad authority to waive fees under the regulations. They proposed that fees be waived when gathering is done for: (1) Educational purposes, (2) non-commercial cultural, ceremonial and/or traditional purposes by people from any ethnic or cultural background (with examples of such purposes given), or (3) ''salvage because other management activities will destroy or damage the product.''

Response: Section 223.279 of the rule references section 223.240 which states, in part, Tribes with treaty or other reserved rights retain their rights to harvest special forest products in accordance with the terms of such rights.

It was never the Agency's intent to require issuance of a permit or charge a fee for every cone, berry, or nut. The rule is being clarified at 223.239 to allow incidental amounts (those at or below the personal use harvest level) of free use without a permit, as determined by the regional forester or a subordinate officer. Section 223.279(c) references section 223.239 subpart G regarding personal use of a forest botanical product.

The responsible forest officer is required, per section 223.278, to ensure that the sale price of any forest botanical product includes at least a portion of the product's fair market value of the product and a portion of the costs associated with administering the pilot program. Section 223.221 requires the Chief to establish minimum rates for the sale of special forest products or groups of special forest products. In addition, section 223.222 requires the Chief to determine the appraised value of special forest products, with valid methods including, but not limited to, transaction evidence appraisals, analytical appraisals, comparison appraisals, and independent estimates based on average investments. Special forest products are required to be sold at minimum rates or appraised values, whichever is higher.

Fees are required to be charged for all forest botanical products to recover a portion of the fair market value and a portion of the costs associated with granting, modifying, or monitoring the harvest of forest botanical products through permits, contracts, or other authorized instruments issued for such

products. However, under section 223.280, the Forest Service waives the collection of fees required, pursuant to section 223.278, for federally-recognized Tribes seeking to harvest forest botanical products for cultural, ceremonial, and/or traditional purposes. Such purposes must be non-commercial, and any such harvest may be conditioned or denied for reasons similar to those provided in section 223.240 of subpart G. This final rule also waives fees for Tribes with treaty or other reserved rights seeking to harvest forest botanical products for cultural, ceremonial, and/or traditional purposes in accordance with such treaty or other reserved rights. Such purposes must also be non-commercial, and any such harvest may be conditioned or denied for reasons similar to those provided in section 223.240 of subpart G. The Forest Service also waives the collection of fees otherwise required, under section 223.280, pursuant to section 223.278 when a regional forester or forest supervisor, having proper authorization from the Chief, makes a written determination that the harvest of a specified forest botanical product will facilitate non commercial scientific research such as species propagation or sustainability, or a forest botanical product is salvage because other management activities will destroy or damage the product.

Free use amounts authorized by the designated official should not exceed amounts under 36 CFR 223.8.

Proposed Section 223.280 Monitoring and Revising of Harvest Levels

Summary of Changes in Proposed Section 223.280 (Final Rule Section 223.281)

This section was renumbered to 223.281. For clarification purposes, the word ''sustainable'' was added to the title of this section, to read ''Monitoring and Revising Sustainable Harvest Levels.'' Minor word changes were also made to this section. Further, the proposed rule included federally-recognized Tribes seeking to harvest forest botanical products for cultural, ceremonial, and/or traditional purposes. Tribes with treaty or other reserved rights are now being added to recognize their rights to forest botanical products for cultural, ceremonial, and/or traditional purposes in accordance with such treaty or other reserved rights.

Comment: About one-fifth of the commenters discussed the 3-year monitoring cycle required by section 223.280, as set forth in section 223.219. Some stressed that many special forest products/forest botanical products exhibit high degrees of inter-annual variability, making a 3-year return cycle too long for some species and too short for others. These comments suggest adopting species-specific monitoring cycles that match ''the cycles of the products being harvested.''

Several comments suggested that the Forest Service lacks the expertise and/or resources to conduct the required monitoring. Nearly all believe that the proposed regulations should be revised to require the involvement of commercial harvesters, buyers, and/or non-commercial local gatherers in the development and implementation of sound monitoring processes. Many also advocated required training for Forest Service personnel on special forest product/forest botanical product monitoring and harvester involvement. One commenter further suggested that involving harvesters in the monitoring effort would accomplish needed monitoring with fewer Forest Service resources. Some of these commenters also noted the importance of using the best available science for monitoring and revising harvest limits, with one suggesting that Forest Service and other researchers could provide valuable assistance in this regard. Two commenters stated that required monitoring should include monitoring of site conditions.

Some commenters were concerned about the reasonableness and feasibility of monitoring every species and material harvested on national forests. A clear distinction was drawn between commercial and non-commercial harvests in this regard, with the commenter requesting that they be allowed flexibility to monitor what they known to be ecologically and/or socially or culturally sensitive. Another stated that monitoring sustainability will be difficult if free use is not tracked. One commenter suggested that issuing free use permits to tribal members and individuals could serve as a monitoring strategy.

Another commenter requested that public gathering not be restricted unless monitoring indicates a clear need to do so. One commenter questioned the adequacy of the Forest Service's Timber Information Manager (TIM) database for monitoring or satisfying the requirement that the baseline levels be set based on the previous 3 years. Another commenter believes that the monitoring provisions are inadequate and calls for at least annual monitoring after sound baselines are established.

Response: The comments in this section are similar to those in section 223.219 and have been addressed there.

Proposed Section 223.281 Disposition of Collected Fees

Summary of Changes in Proposed Section 223.281 (Final Rule Section 223.282)

Section was renumbered to 223.282 due to changes made to 223.279 and 223.280. In addition, minor word and format changes were made to the title and regulatory text for clarification purposes.

Comment: Some commenters felt that Tribes may be legally entitled to a portion of the fees collected from the sale of forest botanical products. Other commenters stated funds should be spent to enforce the program, conduct inventory and monitoring, manage special forest products and forest botanical products, and develop and protect traditional and cultural properties.

Response: Federal ownership of timber and other forest products, and the Forest Service's authority to administer the products, collect monies from the sale of such products, as well as the authority to retain, use, and distribute the monies collected, is derived from a number of statutes, including the Organic Administration Act of June 4, 1897 (Ch. 2, 30 Stat. 11, as amended: 16 U.S.C. 473–475, 477–482, 551), NFMA, and the pilot program law. There are no provisions in these statutes authorizing the Secretary of Agriculture or the Forest Service to distribute a portion of the fees collected for forest products to Tribes.

The Agency agrees with the commenters who suggested that fees collected under the pilot program should be used to pay for costs associated with conducting inventories of forest botanical products and management of the products. The funds collected pursuant to the pilot program law will be used in accordance with section 223.282.

Regulatory Certifications

Regulatory Impact

This final rule has been reviewed under U.S. Department of Agriculture procedures and Executive Order 12866 on Regulatory Planning and Review as amended by 13422. OMB has determined that this is not a significant rule. This final rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This final rule will not interfere with an action taken or planned by another agency nor raise new legal or policy

issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final rule is not subject to OMB review under Executive Order 12866.

Proper Consideration of Small Entities

This final rule has been considered in light of Executive Order 13272 regarding consideration of small entities and the Small Business Regulatory Enforcement Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Executive Order. The final rule will have no adverse impact on small business, small not-for-profit organizations, or small units of government.

Environmental Impact

This final rule has no direct or indirect effect on the environment. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions that do not significantly affect the quality of the human environment. The Department's assessment is that this final rule falls within this category of actions, and that no extraordinary circumstances exist that would require preparation of an environmental assessment or environmental impact statement.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that this action will not pose the risk of a taking of private property.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. When the final rule is adopted, (1) all State and local laws and regulations that conflict with the final rule or that would impede full implementation of this rule will be preempted, (2) no retroactive effect will be given to the final rule; and (3) the Department will not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This action will not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Federalism

The Department has considered this final rule under the requirements of Executive Order 13132, Federalism, and concluded that this action will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary at this time.

Consultation and Coordination With Indian Tribal Governments

Pursuant to Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, the Forest Service conducted a preliminary assessment of the impact of this final rule on Indian Tribal Governments and it determined that the rule does have tribal implications. Therefore, advance consultation with Tribes was required.

Consultation in the form of opportunity to review and comment on these regulations and accompanying Forest Service Handbook direction was provided to all interested federally-recognized Tribes in all Forest Service regions. Regional foresters and forest supervisors initiated consultations with Tribal representatives. A 60-day comment period was established, however many Tribes asked for additional time for consultation, which was granted. Recommendations from the Tribes have been incorporated, as appropriate, into this final rule.

Controlling Paperwork Burdens on the Public

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320, other than:

(a) 0596–0085 Forest Products Free Use Permit, Forest Products Removal Permit/Cash Receipt, Forest Products Sale Permit/Cash Receipt;

(b) 0596–0066 Bid for Advertised Timber; and

(c) 0596–0086 Operating Plans.

Therefore, this final rule imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

Energy Effects

This final rule has been reviewed under Executive Order 13211 of May 18, 2001, and it has been determined that it has no effect on the supply, distribution, or use of energy. This final rule is administrative in nature and, therefore, the preparation of a statement of energy effects is not required.

List of Subjects

36 CFR Part 223

Administrative practice and procedure, Exports, Forests and forest products, Government contracts, National forests, Reporting and recordkeeping requirements.

36 CFR Part 261

Law enforcement, National forests.

■ Therefore, for the reasons set forth in the preamble, the Forest Service amends 36 CFR Parts 223 and 261 as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER, SPECIAL FOREST PRODUCTS, AND FOREST BOTANICAL PRODUCTS

■ 1. Revise the authority citation for part 223 to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620j, 113 Stat. 1501a, 16 U.S.C. 528 note; unless otherwise noted.

■ 2. Revise the part heading to read as set forth above.

■ 3. Add subparts G and H to read as follows:

Subpart G—Special Forest Products

Appraisal and Pricing

Contract and Permit Conditions and Provisions

Subpart G—Special Forest Products

§ 223.215 Applicability.

The regulations contained in this subpart govern the disposal of special forest products from National Forest System lands through sale and free use. Pursuant to the Department of the Interior and Related Agencies Appropriations Act of 2000 (Pub. L. 106–113, Div. B, sec. 1000(a)(3), 113 Stat. 135 (sec. 339 of Title III of H.R. 3423)), as amended in 2004 by Section 335 of Public Law 108–108, special forest products that are also forest botanical products shall be sold, or offered for free use, subject to the requirements of subpart H of this part, until termination of the forest botanical pilot program. A commercial sale of special forest products shall be governed by a contract, permit, or other authorizing instrument. Free use above the incidental-use harvest level shall be conducted under a permit, unless otherwise provided.

§ 223.216 Special Forest Products definitions.

As used in this subpart:

Person: Any individual, partnership, corporation, association, Tribe, or other legal entity.

Special forest products: Products collected from National Forest System lands that include, but are not limited to, bark, berries, boughs, bryophytes, bulbs, burls, Christmas trees, cones, ferns, firewood, forbs, fungi (including mushrooms), grasses, mosses, nuts, pine straw, roots, sedges, seeds, transplants, tree sap, wildflowers, fence material, mine props, posts and poles, shingle and shake bolts, and rails. Special forest products do not include sawtimber, pulpwood, non-sawlog material removed in log form, cull logs, small roundwood, house logs, telephone poles, derrick poles, minerals, animals, animal parts, insects, worms, rocks, water, and soil.

§ 223.217 Authority to dispose of special forest products.

The Forest Service has authority to dispose of special forest products located on National Forest System lands pursuant to the Multiple-Use Sustained-Yield Act of 1960, as amended (16 U.S.C. 528–531); the National Forest Management Act of 1976, as amended (16 U.S.C. 472a *et seq.*); and, the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (16 U.S.C. 1600–1614).

§ 223.218 Consistency with plans, environmental standards, and other management requirements.

The disposal of special forest products from National Forest System lands shall be consistent with applicable land management plans. Each contract, permit, or other authorizing instrument shall include, as appropriate, provisions requiring the person or user to:

(a) Provide fire protection and suppression;

(b) Protect natural resources;

(c) Regenerate harvested species after harvesting operations;

(d) Minimize soil erosion;

(e) Maintain favorable conditions of water flow and quality;

(f) Minimize adverse effects on, protect, or enhance other national forest resources, uses, and improvements; and

(g) Deposit voucher specimens with a curator of a nationally recognized herbarium in North America as identified in the *Index Herbariorum* when the permit, contract, or other authorizing instrument allows bioprospecting.

§ 223.219 Sustainable harvest of special forest products.

(a) *Sustainable harvest levels.* Prior to offering a special forest product for sale or free use, the responsible forest officer must determine the product's sustainable harvest level. A special forest product's sustainable harvest level is the total quantity of the product that can be harvested annually in perpetuity on a sustained yield basis. Responsible forest officers shall not authorize harvest or free use of special forest products in an amount exceeding known sustainable harvest levels. In determining a sustainable harvest level, the responsible forest officer may consider harvest levels of the product for the previous three years, if such information is available. Responsible forest officers may consider factors such as year-to-year and site-to-site variability, climate, weather change, geographic scale, and scientific data available prior to making their sustainability determination and establishing monitoring time frames consistent with paragraph (c) of this section. Responsible forest officers will consult with Tribes, to the extent appropriate, to determine sustainable harvest levels based on historical information. In addition, responsible forest officers may consult with other appropriate parties to determine sustainable harvest levels based on historical information.

(b) *Harvest of protected species.* The sale or free use of special forest products listed or proposed for listing as endangered or threatened under the Endangered Species Act is prohibited, except as authorized by the U.S. Fish and Wildlife Service. Moreover, regional guidelines will identify when the sale or free use of any special forest product listed on the Regional Forester's sensitive plant list, species of concern list, species of interest list, or protected under the Convention on International Trade in Endangered Species may be authorized.

(c) *Monitoring of established harvest levels.* At least once every three fiscal years, or as otherwise established by the Regional Forester, the Forest Service shall monitor the effects of harvesting on the sustainability of special forest products. Such monitoring may include, but is not limited to, on-site examination of the product, including both harvested and non-harvested areas, and a review of past and projected harvest levels to the extent such information is available.

(d) *Revision of harvest levels.* The sustainable harvest level for a special forest product may be increased or decreased, as appropriate, based on monitoring.

§ 223.220 Quantity determination.

Sale contracts, permits, or other authorizing instruments may provide for determining the quantity of special forest products by scaling, measuring, weighing, counting, or other reliable means.

Appraisal and Pricing

§ 223.221 Establishing minimum rates.

The Chief of the Forest Service shall establish minimum rates for the sale of special forest products or groups of special forest products. Products must be sold for appraised value or minimum rates, whichever is higher. No products may be sold or harvested for less than minimum rates except to provide for the removal of insect infested, diseased, dead or distressed products.

§ 223.222 Appraisal.

The Chief of the Forest Service shall determine the appraised value of special forest products. Valid methods to determine appraised value include, but are not limited to, transaction evidence appraisals, analytical appraisals, comparison appraisals, and independent estimates based on average investments. Special forest products must be sold at minimum rates or appraised value, whichever is higher.

Contract and Permit Conditions and Provisions

§ 223.223 Advance payment.

Contracts, permits, or other authorizing instruments for the sale of special forest products shall require advance payment, unless the contract, permit, or instrument authorizes the person to furnish a payment guarantee satisfactory to the Forest Service. Advance payments found to be in excess of amounts due the United States shall be refunded to the person or their successor in interest, subject to the requirements of the Debt Collection Improvement Act.

§ 223.224 Performance bonds and security.

A contract, permit, or other authorizing instrument for the sale of special forest products may require the person to furnish a performance bond or other security for satisfactory compliance with its terms.

§ 223.225 Term.

The term of any contract, permit, or other authorizing instrument for the sale of special forest products shall not exceed 10 years, unless the Secretary of Agriculture finds that better utilization of the various forest resources consistent with the Multiple-Use Sustained-Yield Act of 1960, as amended (16 U.S.C. 528–531) will result. Any such finding by the Secretary of Agriculture shall be made in writing.

§ 223.226 Term adjustments for force majeure delay.

Contracts or other authorizing instruments for the sale of special forest products, excluding permits, may contain a provision allowing the term to be extended if circumstances beyond the person's reasonable control delay performance. In determining whether such an extension is appropriate, responsible forest officers shall consider the value of the products or species, the length and type of authorizing instrument, the need for early/accelerated harvest, and any other appropriate factors. Circumstances beyond a person's reasonable control may include, but are not limited to, acts of God, acts of the public enemy, acts of the Government, labor disputes, fires, insurrections, and floods. The responsible forest officer may grant such an extension upon finding:

(a) Circumstances beyond the person's reasonable control delayed performance; and

(b) The person has diligently performed in accordance with the contract or other authorizing instrument.

Advertisement and Bids

§ 223.227 Sale advertisement.

(a) The Forest Service shall advertise any special forest products sales with an appraised value equal to or greater than $10,000 for at least 30 days, except as provided in paragraph (c) of this section.

(b) When the sale's appraised value is less than $10,000, the Forest Service may sell the products without advertisement; however, if there is competitive interest in a sale valued at less than $10,000, the Forest Service shall advertise the sale for no less than 7 days.

(c) Notwithstanding paragraphs (a) and (b) of this section, the Forest Service may, at its discretion, sell any special forest products without advertisement, or advertise a special forest products sale for a period less than 30 days if:

(1) Deterioration of a special forest product threatens its value; or

(2) The products were previously advertised for competitive bidding and no satisfactory bids were received; or

(3) The products are remaining from expired, cancelled, or abandoned contracts, permits, or other authorizing instruments.

§ 223.228 Contents of advertisement.

The Forest Service shall include the following information in an advertisement for the sale of special forest products:

(a) The location and estimated quantities of special forest products offered for sale;

(b) The time and place at which sealed bids will be opened in public;

(c) A provision asserting the Agency's right to reject any and all bids;

(d) The place where complete information on the offering may be obtained; and

(e) Notice that a prospectus is available to the public and to interested potential bidders.

§ 223.229 Contents of prospectus.

The prospectus for the sale of special forest products shall include the following:

(a) The minimum acceptable value or unit price for a product and the amount or rate of any deposits required in addition to the unit price of a product;

(b) The amount of the bid guarantee that must accompany each bid;

(c) The amount of the deposit or downpayment the successful bidder must make and the time-frame for making such deposit or downpayment;

(d) The location and area of the sale, including acreage;

(e) The estimated volumes, quality, size, or other appropriate measure for the special forest products;

(f) A description of any special harvest and removal requirements for the sale;

(g) The method of bidding that the Forest Service will employ; sealed bid or sealed bid followed by oral auction;

(h) The type of contract, permit, or other authorizing instrument to be used for the sale;

(i) The termination date and normal operating season, if any, of the contract, permit, or other authorizing instrument;

(j) The amount of performance bond required; and

(k) Such additional information about the sale as the Forest Service deems appropriate in order to encourage bidders to perform on-site investigations.

§ 223.230 Bid restriction on resale of incomplete contracts, permits, or other instruments.

In any resale of special forest products remaining from a previous sale, the Forest Service shall not consider a bid

submitted by a person who failed to complete or defaulted the original contract, permit, or other instrument authorizing the sale, or from any affiliate of such person, except when such consideration serves the public interest.

§ 223.231 Bidding methods.

The Contracting Officer or designated forest officer shall offer advertised sales of special forest products through sealed bid or sealed bid followed by oral auction. The method selected shall:

(a) Ensure open and fair competition;

(b) Ensure that the Federal Government receives minimum rates or appraised value, whichever is higher;

(c) Be consistent with the National Forest Management Act and other applicable federal laws;

(d) Require, as a prerequisite to participation in an oral auction, that a bidder submit a written sealed bid at least equal to the minimum acceptable bid price(s) specified in the prospectus. The Forest Service shall not accept a bid at oral auction that is less than the bidder's initial sealed bid; and

(e) Specify the use of sealed bids or a mix of bidding methods in the affected area where there is a reasonable belief that collusive and/or abnormal bidding practices may be occurring.

§ 223.232 Disclosure of relation to other bidders.

The Forest Service may require any prospective bidder for special forest products to disclose its relationship with other potential bidders or operators. Such disclosure may include a certified statement listing:

(a) Stockholders or members of the bidder's firm;

(c) Officers;

(d) Members of the board of directors; or

(e) Holders of bonds, notes, or other types of debt.

Award of Contracts, Permits, or Other Authorizing Instruments

§ 223.233 Award to highest bidder.

(a) The Forest Service shall award contracts, permits, or other authorizing instruments for advertised sales as follows:

(1) The Forest Service will award a special forest products sale to the responsible bidder that submits the highest bid that conforms to the sale conditions in the prospectus.

(2) If the highest bidder cannot meet the conditions for the sale, as specified in the prospectus, the Forest Service may:

(i) Reject all bids and reoffer the sale, or

(ii) Offer the award at the high bid level to the next highest qualified bidder until the award is accepted or refused by all of the conforming bidders.

(iii) In the event of a tie between two or more responsible high bidders submitting conforming bids, the Forest Service shall award the sale by drawing of lots.

(iv) If no bids meet the specified conditions in the sale's prospectus, or if there are other irregularities in the bidding process, the Forest Service may reject all bids, and, at its discretion, reoffer the sale.

(b) [Reserved]

§ 223.234 Determination of responsibility.

(a) A Contracting Officer shall not award a contract, permit, or other instrument authorizing the sale of special forest products to a declared high bidder unless that officer makes an affirmative determination that the person is responsible. In the absence of information clearly establishing that the declared high bidder is responsible, the Contracting Officer shall conclude that the declared high bidder is not responsible.

(b) In order to make an affirmative determination of responsibility, the Contracting Officer must find that:

(1) The declared high bidder has adequate financial resources to perform the contract, permit, or other authorizing instrument, or the ability to obtain such resources;

(2) The declared high bidder is able to complete the contract, permit, or other authorizing instrument within the relevant term, taking into consideration the declared high bidder's other existing commercial and governmental obligations;

(3) The declared high bidder has a satisfactory record of integrity and business ethics;

(4) The declared high bidder has or is able to obtain equipment and supplies suitable for harvesting the special forest product(s) and for meeting applicable resource protection requirements;

(5) The declared high bidder is otherwise qualified and eligible to receive an award of a contract, permit, or other authorizing instrument under all applicable laws and regulations;

(6) The declared high bidder has a satisfactory performance record on contracts, permits, and other agreements with the U.S. Government. Failure to apply sufficient diligence and perseverance to perform a contract, permit, or other instrument is strong evidence that a declared high bidder is not responsible. A declared high bidder that is, or has been deficient in performance shall be deemed not responsible, unless the declared high bidder demonstrates that the deficiency arose from circumstances beyond their reasonable control.

(c) Affiliated concerns, as defined in 36 CFR 223.49(a)(5), are normally considered separate entities in determining whether the declared high bidder that is to perform the contract meets the applicable standards for responsibility. However, the responsible Forest Officer shall consider an affiliate's past performance and integrity when they may adversely affect the responsibility of the declared high bidder.

§ 223.235 Unilateral delay, suspension, or modification of contracts, permits, or other instruments authorizing the sale of special forest products.

(a) *Reasons for delay, suspension or modification.* The Forest Service may unilaterally delay, suspend, or modify any contract, permit, or instrument authorizing the sale or free use of special forest products for any of the following reasons:

(1) To prevent actual or potential harm to the environment, including without limitation, harm to land, water, air, habitat, plants, animals, cave resources, or cultural resources;

(2) To ensure consistency with land management plans or other management documents;

(3) To conduct environmental analyses, including, without limitation, consultation under the Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq;*

(4) Existing or threatened litigation that might affect or involve a person's harvest of special forest products; or

(5) For any reasons or other conditions set forth in the contract, permit, or other authorizing instrument governing the sale.

(b) *Compensation.* (1) The Forest Service may compensate a person for the unilateral delay, suspension or modification of a contract, permit, or other authorizing instrument in accordance with the applicable provisions set forth in such document or, in the absence of such provisions, in accordance with applicable Forest Service methods and procedures in effect when a claim for compensation is submitted, giving due consideration to the cause, duration, and financial impact of the delay, suspension or modification.

(2) A person submitting a claim must comply with claim provisions in the governing contract, permit, or other authorizing instrument, or, in the absence of such provisions, must submit a written claim for compensation

accompanied by supporting documentation that fully substantiates the claim.

(c) *Authority to unilaterally delay, suspend or modify.* The Contracting Officer administering the sale or a responsible superior officer may delay, suspend, or modify the contract, permit, or other authorizing instrument by issuing instructions to a person to delay, suspend, or modify operations. Such instructions to delay, suspend or modify shall be issued to a person in writing, except when exigent circumstances warrant oral communication, in which case the officer shall promptly follow-up in writing.

§ 223.236 Unilateral termination.

(a) *Reasons for Unilateral Termination.* The Forest Service may unilaterally terminate a contract, permit, or other instrument authorizing the sale or free use of special forest products for any of the following reasons:

(1) Any of the reasons provided in § 223.235(a);

(2) Material breach or continued violation of the contract, permit or other authorizing instrument;

(3) Violation of any Federal or State laws or regulations related to:

(i) Obtaining, attempting to obtain, selling, trading, or processing special forest products;

(ii) Obtaining, attempting to obtain, or performing a public contract or subcontract;

(iii) Harming or damaging public lands or protected species; or

(iv) Business integrity, honesty, or responsibility.

(b) *Compensation.* (1) The Forest Service may compensate a person for the unilateral termination of a contract, permit, or other authorizing instrument in accordance with the applicable provisions set forth in such document or, in the absence of such provisions, in accordance with applicable Forest Service methods and procedures in effect when a claim for compensation is submitted, giving due consideration to the cause, duration, and financial impact of the termination.

(2) A person submitting a claim must comply with claim provisions in the governing contract, permit, or other authorizing instrument, or, in the absence of such provisions, must submit a written claim for compensation accompanied by supporting documentation that fully substantiates the claim.

(3) No compensation shall be provided if the unilateral termination is due in whole or in part to the reasons set forth at § 223.236(a)(2) or (3).

(c) *Authority to unilaterally terminate.* The Chief, or the Chief's designee, has the authority to unilaterally terminate a contract, permit, or other instrument authorizing the sale or free use of special forest products. Any such termination shall be issued in writing, except when exigent circumstances warrant oral communication, in which case a written communication shall follow promptly.

§ 223.237 Request for delay, suspension, modification, or termination.

(a) *Request.* A person authorized to harvest special forest products may request delay, suspension, modification, or termination of their contract, permit, or other authorizing instrument pursuant to the provisions set forth in the contract, permit, or instrument, if any, or for another reasonable cause, including without limitation, catastrophic damage to the product or substantially changed market conditions. Any such request must be submitted in writing and include a detailed explanation of all relevant circumstances supporting the request.

(b) *Response.* The Forest Service shall respond to any request for delay, suspension, modification, or termination in accordance with applicable provisions in the contract, permit, or other authorizing instrument, or, in the absence of such provisions, respond in a manner that is reasonable in light of the request's circumstances. The Forest Service may deny any request, in whole or in part, in accordance with the provisions of the relevant contract, permit, or instrument, or, in the absence of such provisions, at the Agency's discretion.

(c) *Authority.* The Contracting Officer administering a sale or a superior officer has the authority to deny or grant any request by a person authorized to harvest special forest products to delay, modify, suspend, or terminate a contract, permit, or other authorizing instrument. The Forest Service's response to a request for delay, modification, suspension, or termination shall be issued in writing, except when exigent circumstances warrant oral communication, in which case a written communication shall follow promptly.

§ 223.238 Free use authorization to U.S. Army and Navy.

Subject to delegations of authority by the Chief, Regional Foresters may approve the harvest of special forest products by the U.S. Army and Navy for the purposes identified at 16 U.S.C. 492.

§ 223.239 Free use by individuals.

(a) *Free use.* A person may harvest a special forest product from National Forest System lands free of charge for personal, non-commercial use up to the amount or quantity authorized by a designated Forest Service officer, a Forest Supervisor, or a Regional Forester, as delegated at 36 CFR 223.8.

(b) *Free use without a permit up to the incidental use harvest level.* No permit is required for the free use of a special forest product at or below that product's incidental-use harvest level, which shall be determined at the discretion of the regional forester or a subordinate officer. The incidental use harvest level covers small amounts of special forest products, such as cones, mushrooms, berries, acorns, black walnuts, or medicinal roots. Any free use of a special forest product that does not have an incidental-use harvest level is subject to this section's permit requirements.

(c) *Free-use permit requirement.* No person seeking free use of a special forest product, except one identified in § 223.239(e), may harvest a special forest product above the product's incidental-use harvest level without submitting an application to a forest officer and obtaining a free-use permit, unless the permit requirement has been waived for a specific special forest product in a designated free-use area.

(d) *Contents of the permit.* The permit shall indicate the type, amount, and/or value of the product to be harvested, the permit's duration, and shall contain other restrictions and requirements as appropriate.

(e) *Free use without a permit for members of Tribes with treaty or other reserved rights related to special forest products.* A member of a Tribe with treaty or other reserved rights related to special forest products retains his/her ability to harvest such products in full accordance with existing rights, including free-use harvest without obtaining a free-use permit, as specified in treaty or other reserved rights.

(f) *Free use without a permit upon the request of the governing body of a Tribe.* At the Agency's discretion, responsible forest officers may, upon the request of an authorized representative of the governing body of a Tribe, issue a permit that would not otherwise be required under paragraph (e) of this section to a Tribe with treaty or other reserved rights related to special forest products for the free use of a specified quantity of special forest products. That Tribe may then allocate specified quantities of the special forest product(s) to individual Tribal members, up to the maximum amount specified in the Tribal free-use permit. Any Tribe issued such a permit must provide the Forest Service with

information related to the permitted harvest, upon request.

(g) *Free-use restrictions.* A Forest Officer may set conditions on the free-use harvest of a special forest product or deny the free use of a special forest product. Reasons for denying free-use access or setting conditions on free use, except as specified in § 223.240, may include, but are not limited to:

(1) Ensuring public safety;

(2) Preventing interference with Forest Service and/or commercial operations;

(3) Ensuring the sustainability of a special forest product; or

(4) Otherwise protecting National Forest System land.

(h) *Unilateral termination of a free-use permit.* The responsible forest officer, or any superior officer, may terminate a free use permit without compensation at any time for reasons including, but not limited to, resource protection, weather factors, fire season, road access, conflicts with other users, or permit violations.

(i) *Subsistence in Alaska.* This section does not affect subsistence uses implemented under Title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3126).

§ 223.240 Tribes and treaty and other reserved rights.

Tribes with treaty or other reserved rights related to special forest products retain their ability to harvest special forest products in full accordance with existing rights. However, consistent with all applicable rights, Regional Foresters may set conditions on Tribes with treaty or other reserved rights related to special forest products to protect the sustainability of special forest products or to otherwise protect National Forest System land. Regional Foresters may only prohibit Tribes with treaty or other reserved rights related to special forest products from harvesting a special forest product to protect public health and safety or to ensure sustainable harvest levels. Regional Foresters will provide a Tribe with treaty or other reserved rights related to special forest products that is prohibited from harvesting a special forest product with written documentation supporting the decision.

§ 223.241 Disposal of seized special forest products.

The Forest Service may dispose of seized special forest products that have been illegally obtained from National Forest System lands by sale or free use. Any sale of such products shall be conducted in accordance with the requirements of this subpart; however, no seized special forest products shall be sold to the person who collected them illegally. The Forest Service shall not dispose of a seized product by sale or free use if that product is:

(a) Listed or proposed for listing as threatened or endangered under the Endangered Species Act;

(b) Identified as prohibited for sale or trade under the Convention on Internal Trade in Endangered Species; or

(c) Listed on the Regional Forester's sensitive plant list, species of concern list, or species of interest list.

§ 223.242 Supplemental guidance, Memorandum of Agreements and Memorandums of Understanding.

Consistent with subparts G and H of this part, regional foresters may issue supplemental guidance and approve Memorandums of Agreement and Memorandums of Understanding to promote local collaboration, issue resolution, and local implementation of these regulations. Existing Memorandums of Agreement and Memorandums of Understanding related to forest products must be made consistent with subparts G and H within 24 months from December 29, 2008 or those agreements will terminate.

Subpart H—Forest Botanical Products

§ 223.275 Establishment of a pilot program.

This subpart governs the Forest Service's pilot program for the disposal of forest botanical products, as authorized by the Department of the Interior and Related Agencies Appropriations Act of 2000, (Pub. L. 106–113, Div. B, sec. 1000(a)(3), 113 Stat. 135 (enacting into law sec. 339 of Title III of H.R. 3423)), as amended in 2004 by Section 335 of Public Law 108–108. The pilot program shall be in effect through September 30, 2009, unless extended or made permanent by Congress.

§ 223.276 Applicability.

This subpart applies to the sale and free use of forest botanical products, as defined in § 223.277, from National Forest System lands, until September 30, 2009, unless the pilot program is extended or made permanent by Congress. The Forest Service shall dispose of forest botanical products in accordance with the procedures set forth in 36 CFR part 223 Subpart G, subject to the requirements of this subpart.

§ 223.277 Forest botanical products definition.

As used in this subpart, the following term shall mean:

Forest botanical products are: Naturally occurring special forest products, including, but not limited to, bark, berries, boughs, bryophytes, bulbs, burls, cones, ferns, fungi (including mushrooms), forbs, grasses, mosses, nuts, pine straw, roots, sedges, seeds, shrubs, transplants, tree sap, and wildflowers. Forest botanical products are not animals, animal parts, Christmas trees, fence material, firewood, insects, mine props, minerals, posts and poles, rails, rocks, shingle and shake bolts, water, worms, and soil.

§ 223.278 Sale of forest botanical products and collection of fees.

The responsible Forest Officer shall ensure that the sale price of any forest botanical product includes a portion of the product's fair market value and a portion of the costs incurred by the Department of Agriculture associated with granting, modifying, or monitoring the authorization for harvest of forest botanical products, including the costs of any environmental or other analysis. The fair market value of forest botanical products shall be equal to the appraised value determined in accordance with § 223.222. The sum of the portions of fair market value and costs making up the sale price must be greater than or equal to the forest botanical product's fair market value. All other aspects related to the sale of forest botanical products shall be governed under 36 CFR part 223 Subpart G.

§ 223.279 Personal use.

(a) *Personal use.* A person may harvest forest botanical products from National Forest Systems lands free of charge for personal, non-commercial use up to the personal-use harvest level.

(b) *Personal use harvest level.* In conjunction with determining sustainable harvest levels under § 223.219, the responsible Forest Officer shall determine personal-use harvest levels for specific forest botanical products, which shall be equal to the amount or quantity authorized for free use under § 223.239(a).

(c) *Personal-use permit requirement.* A person seeking personal use of a forest botanical product must comply with the free-use permitting requirements of § 223.239.

§ 223.280 Waiver of fees and/or fair market value.

The Forest Service waives the collection of fees otherwise required pursuant to § 223.278 of this subpart as follows:

(a) For all federally-recognized Tribes seeking to harvest forest botanical products for cultural, ceremonial, and/or traditional purposes. Such purposes must be non-commercial, and any such harvest may be conditioned or denied for reasons similar to those provided in § 223.240 of subpart G; and

(b) For Tribes with treaty or other reserved rights seeking to harvest forest botanical products for cultural, ceremonial, and/or traditional purposes in accordance with such treaty or other reserved rights. Such purposes must be non-commercial, and any such harvest may be conditioned or denied for reasons similar to those provided in § 223.240 of subpart G; and

(c) When a Regional Forester or Forest Supervisor, having proper authorization from the Chief, makes a written determination that:

(1) The harvest of a specified forest botanical product will facilitate non-commercial scientific research such as species propagation or sustainability: or

(2) A forest botanical product is salvage because other management activities will destroy or damage the product.

§ 223.281 Monitoring and revising sustainable harvest levels.

The Forest Service shall monitor and revise sustainable harvest levels for forest botanical products in accordance with § 223.219 of subpart G.

§ 223.282 Deposit and expenditure of collected fees.

(a) Funds collected under the pilot program for the harvest and sale of forest botanical products shall be deposited into a special account in the Treasury of the United States. These funds shall be available for expenditure at National Forests or National Grasslands where the funds were collected until September 30, 2010, unless the program is extended.

(b) Funds deposited into the special account specified in paragraph (a) of this section shall be expended at a National Forest or National Grassland in an amount equal to the fees collected at that unit and shall be used to pay for the costs of:

(1) Conducting inventories of forest botanical products;

(2) Determining, monitoring, and revising sustainable harvest levels for forest botanical products;

(3) Monitoring and assessing the impact of harvest levels and methods;

(4) Conducting restoration activities, including vegetation restoration; and

(5) Administering the pilot program, including environmental or other analyses.

PART 261—PROHIBITIONS

■ 4. The authority citation for part 261 continues to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 472, 551, 620(f), 1133(c), (d)(1), 1246(i).

■ 5. Revise 261.6 to read as follows:

§ 261.6 Timber and other forest products.

The following are prohibited:

(a) Cutting, removing, or otherwise damaging any timber, tree, or other forest product, including special forest products and forest botanical products, except as authorized by Federal law, regulation, permit, contract, special use authorization, free-use authorization, or personal-use authorization.

(b) Cutting any standing tree under any permit or contract before a Forest Officer has marked it or has otherwise designated it for cutting.

(c) Unless otherwise provided for in any permit or contract, removing any timber or other forest product, including special forest products and forest botanical products, except to a place designated for scaling, measuring, counting, or other method of accounting by a forest officer.

(d) Stamping, marking with paint, or otherwise identifying any tree, or other forest product, including special forest products and forest botanical products, in a manner similar to that employed by forest officers to mark or designated a tree or any other forest product for cutting, or removal.

(e) Loading, removing or hauling timber, or other forest products, including special forest products and forest botanical products, acquired under any permit, contract, free-use authorization, memorandum of agreement, memorandum of understanding, or personal-use authorization unless such product is designated for loading, removing, or hauling as required or authorized in such permit, contract, free-use authorization, memorandum of agreement, memorandum of understanding, or personal-use authorization

(f) Selling or exchanging any timber or other forest product, including special forest products and forest botanical products, obtained under free use or personal use pursuant to §§ 223.5 through 223.11, § 223.239 or § 223.279 of this chapter.

(g) Violating any timber export or substitution restriction in §§ 223.160 through 223.164 of this chapter.

(h) Violating the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), or its implementing regulations at §§ 223.185 through 223.203 of this chapter.

Dated: December 19, 2008.

Melissa M. Simpson,

Deputy Under Secretary, NRE.

[FR Doc. E8–30672 Filed 12–22–08; 11:15 am]

BILLING CODE 3410–11–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1250, 1251, and 1256

[NARA–07–0006]

RIN 3095–AB32

Testimony by NARA Employees Relating to Agency Information and Production of Records in Legal Proceedings

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration (NARA) is revising its regulations relating to demands for records or testimony in legal proceedings. The rule is intended to facilitate access to records in NARA's custody, centralize agency decision making in response to demands for records or testimony, minimize the disruption of official duties in complying with demands, maintain agency control over the release of agency information, and protect the interests of the United States. In addition, this rule consolidates existing regulations and applies to demands in legal proceedings where the United States is a party and to demands in legal proceedings where the United States is not a party. The rule affects parties to lawsuits and their counsel.

DATES: Effective Date: January 28, 2009.

FOR FURTHER INFORMATION CONTACT: Laura McCarthy at (301) 837–3023 or via fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: On November 16, 2007, NARA published a proposed rule (72 FR 64558) for a 60-day public comment period on new regulations containing NARA's policy and procedures in response to demands for testimony or records in legal proceedings.

We notified several listservs and researcher organizations about the proposed rule and its availability on regulations.gov. We also posted a notice about the rule on our Web site, *http://www.archives.gov.* We received no public comments. We are adopting the proposed rule as a final rule after making a number of minor changes to clarify the rule.

In particular, in several instances we made minor word changes to clarify the meaning of a particular sentence or paragraph: we clarified the requirements of the Privacy Act, 5 U.S.C. 552a, if records sought are covered by the Privacy Act; specified that the demanding party is responsible for complying with all service requirements; and clarified the process for submitting witness fees and fees for the production of records.

This final rule contains information collection activities that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. These information collection requirements, contained in § 1251.10, have been approved by OMB under the control number 3095–0038 with a current expiration date of May 31, 2011.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it affects individuals. This regulation does not have any federalism implications. This rule is not a major rule as defined in 5 U.S.C. chapter 8, Congressional Review of Agency Rulemaking.

List of Subjects

36 CFR Part 1250

Confidential business information, Freedom of information.

36 CFR Part 1251

Administrative practice and procedure.

36 CFR Part 1256

Archives and records, Copyright, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, NARA amends Subchapter C of 36 CFR Chapter XII as follows:

PART 1250—PUBLIC AVAILABILITY AND USE OF FEDERAL RECORDS

■ 1. The authority citation for part 1250 is revised to read as follows:

Authority: 44 U.S.C. 2104(a), 2204; 5 U.S.C. 552; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

§ 1250.84 [Removed]

■ 2. Remove § 1250.84.

■ 3. Add new part 1251 to read as follows:

PART 1251—TESTIMONY BY NARA EMPLOYEES RELATING TO AGENCY INFORMATION AND PRODUCTION OF RECORDS IN LEGAL PROCEEDINGS

Sec.

Authority: 44 U.S.C. 2104; 44 U.S.C. 2108; 44 U.S.C. 2109; 44 U.S.C. 2111 note; 44 U.S.C. 2112; 44 U.S.C. 2116; 44 U.S.C. ch. 22; 44 U.S.C. 3103.

§ 1251.1 What is the purpose of this part?

(a) This part provides the policies and procedures to follow when submitting a demand to an employee of the National Archives and Records Administration (NARA) to produce records or provide testimony relating to agency information in connection with a legal proceeding. You must comply with these requirements when you request the release or disclosure of records or agency information.

(b) The National Archives and Records Administration intends these provisions to:

(1) Promote economy and efficiency in its programs and operations;

(2) Minimize NARA's role in controversial issues not related to its mission;

(3) Maintain NARA's impartiality among private litigants when NARA is not a named party; and

(4) Protect sensitive, confidential information and the deliberative processes of NARA.

(c) In providing for these requirements, NARA does not waive the sovereign immunity of the United States.

(d) This part provides guidance for the internal operations of NARA. It does not create any right or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

§ 1251.2 To what demands does this part apply?

This part applies to demands to NARA employees for factual, opinion, or expert testimony relating to agency information or for production of records in legal proceedings whether or not NARA is a named party. However, it does not apply to:

(a) Demands upon or requests for a NARA employee to testify as to facts or events that are unrelated to his or her official duties and that are unrelated to the functions of NARA;

(b) Demands upon or requests for a former NARA employee to testify as to matters in which the former employee was not directly or materially involved while at NARA;

(c) Requests for the release of, or access to, records under the Freedom of Information Act, 5 U.S.C. 552, as amended; the Privacy Act, 5 U.S.C. 552a; the Federal Records Act, 44 U.S.C. chs. 21, 29, 31, 33; the Presidential Records Act, 44 U.S.C. ch. 22; or the Presidential Recordings and Materials Preservation Act, 44 U.S.C. 2111 note;

(d) Demands for records or testimony in matters before the Equal Employment Opportunity Commission or the Merit Systems Protection Board; and

(e) Congressional demands and requests for testimony or records.

§ 1251.3 What definitions apply to this part?

The following definitions apply to this part:

Court of competent jurisdiction means, for purposes of this part, the judge or some other competent entity, as authorized by statute or regulation or other lawful means, and not simply by an attorney or court clerk, must sign a demand for records the disclosure of which is constrained by the Privacy Act, 5 U.S.C. 552a because section (b)(11) of the Act requires appropriate authorization of a court of competent jurisdiction. See *Doe* v. *Digenova,* 779 F.2d 74 (D.C. Cir. 1985); *Stiles* v. *Atlanta Gas Light Company,* 453 F. Supp. 798 (N.D. Ga. 1978).

Demand means a subpoena, or an order or other command of a court or other competent authority, for the production, disclosure, or release of records in a legal proceeding, or for the appearance and testimony of a NARA employee in a legal proceeding.

General Counsel means the General Counsel of NARA or a person to whom the General Counsel has delegated

authority under this part. General Counsel also means the Inspector General of NARA (or a person to whom the Inspector General has delegated authority under this part) when a demand is made for records of NARA's Office of the Inspector General, or for the testimony of an employee of NARA's Office of the Inspector General.

Legal proceeding means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer, legislative body, or other body that conducts a legal or administrative proceeding. Legal proceeding includes all phases of litigation.

NARA means the National Archives and Records Administration.

NARA employee or employee means:

(1) Any current or former officer or employee of NARA, except that this definition does not include former NARA employees who are retained or hired as expert witnesses concerning, or who agree to testify about, matters available to the public or matters with which they had no specific involvement or responsibility during their employment with NARA;

(2) Any other individual hired through contractual agreement by or on behalf of NARA or who has performed or is performing services under such an agreement for NARA;

(3) Any individual who served or is serving in any consulting or advisory capacity to NARA, whether formal or informal; and

(4) Any individual who served or is serving in any volunteer or internship capacity to NARA.

Records or agency information means:

(1) Archival records, which are permanently valuable records of the United States Government that have been transferred to the legal custody of the Archivist of the United States;

(2) Operational records, which are those records that NARA creates or receives in carrying out its mission and responsibilities as an executive branch agency. This does not include archival records as defined above in this section;

(3) All documents and materials which are NARA agency records under the Freedom of Information Act, 5 U.S.C. 552, as amended;

(4) Presidential records as defined in 44 U.S.C. 2201; historical materials as defined in 44 U.S.C. 2101; records as defined in 44 U.S.C. 2107 and 44 U.S.C. 3301;

(5) All other documents and materials contained in NARA files; and

(6) All other information or materials acquired by a NARA employee in the performance of his or her official duties or because of his or her official status.

Testimony means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, interviews, and statements made by an individual in connection with a legal proceeding.

§ 1251.4 May employees provide records or give testimony in response to a demand without authorization?

No, except as otherwise permitted by § 1251.14 of this part, no employee may produce records and information or provide any testimony relating to agency information in response to a demand, or other legal request, without the prior, written approval of the General Counsel.

§ 1251.6 How does the General Counsel determine whether to comply with a demand for records or testimony?

The General Counsel may consider the following factors in determining whether or not to grant an employee permission to testify on matters relating to agency information, or permission to produce records in response to a demand:

(a) NARA's compliance with the demand is required by federal law, regulation or rule, or is otherwise permitted by this part;

(b) The purposes of this part are met;

(c) Allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;

(d) NARA has an interest in the decision that may be rendered in the legal proceeding;

(e) Allowing such testimony or production of records would assist or hinder NARA in performing its statutory duties;

(f) Allowing such testimony or production of records would involve a substantial use of NARA resources;

(g) Responding to the demand would interfere with the ability of NARA employees to do their work;

(h) Allowing such testimony or production of records would be in the best interest of NARA or the United States;

(i) The records or testimony can be obtained from the publicly available records of NARA or from other sources;

(j) The demand is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand arose;

(k) Disclosure would violate a statute, Executive Order or regulation;

(l) Disclosure would reveal confidential, sensitive, or privileged information, trade secrets or similar, confidential commercial or financial information, otherwise protected information, or information which would otherwise be inappropriate for release;

(m) Disclosure would impede or interfere with an ongoing law enforcement investigation or proceeding, or compromise constitutional rights;

(n) Disclosure would result in NARA appearing to favor one litigant over another;

(o) Disclosure relates to documents that were created by another agency;

(p) A substantial Government interest is implicated;

(q) The demand is within the authority of the party making it;

(r) The demand is sufficiently specific to be answered; and

(s) Other factors, as appropriate.

§ 1251.8 Who is authorized to accept service of a subpoena demanding the production of records or testimony?

(a) Demands for testimony, except those involving an employee of NARA's Office of the Inspector General, must be addressed to, and served on, the General Counsel, National Archives and Records Administration, Suite 3110, 8601 Adelphi Road, College Park, MD 20740–6001.

(b) Demands for the testimony of an employee of NARA's Office of the Inspector General must be addressed to, and served on, the Inspector General, National Archives and Records Administration, Suite 1300, 8601 Adelphi Road, College Park, MD 20740–6001.

(c) Demands for the production of NARA operational records, except those of the Office of the Inspector General, must be addressed to, and served on, the General Counsel.

(d) Demands for records of the Inspector General must be addressed to, and served on, the Inspector General.

(e) Demands for the production of records stored in a Federal Records Center (FRC), including the National Personnel Records Center, must be addressed to, and served on, the director of the FRC where the records are stored. NARA honors the demand to the extent required by law, if the agency having legal title to the records has not imposed any restrictions. If the agency has imposed restrictions, NARA notifies the authority issuing the demand that NARA abides by the agency-imposed restrictions and refers the authority to the agency for further action.

(f) Demands for the production of materials designated as Federal archival records, Presidential records or donated historical materials administered by NARA must be addressed to, and served

on either: the Assistant Archivist for Records Services—Washington, DC (for records located in Headquarters); Director of Archival Operations (for records located in the regions); or the appropriate Presidential Library Director.

(g) For matters in which the United States is a party, the Department of Justice should contact the General Counsel instead of submitting a demand for records or testimony on its own or another agency's behalf.

(h) The demanding party is responsible for complying with all service requirements, including any additional requirements contained in the Federal Rules of Civil Procedure or other statutory or regulatory authority.

(i) Contact information for each NARA facility may be found at 36 CFR part 1253.

§ 1251.10 What are the filing requirements for a demand for documents or testimony?

You must comply with the following requirements, as appropriate, whenever you issue a demand to a NARA employee for records, agency information or testimony:

(a) Your demand must be in writing and must be served on the appropriate party as identified in § 1251.8.

(b) Demands for production of records that are governed by the Privacy Act require authorization of a court of competent jurisdiction as defined in § 1251.3.

(c) Your written demand (other than a demand pursuant to the Federal Rules of Civil Procedure in a case in which NARA is a party, in which case you must comply with the requirements of that rule) must contain the following information:

(1) The caption of the legal proceeding, docket number, and name and address of the court or other authority involved;

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance;

(3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement as to how the need for the information outweighs the need to maintain any confidentiality of the information and outweighs the burden on NARA to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than a NARA employee, such as a retained expert;

(6) If testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used instead of testimony;

(7) A description of all previous decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requester and other parties may require with each NARA employee for time spent by the employee in connection with the request for testimony.

(d) NARA reserves the right to require additional information to process your demand.

(e) Your demand (other than a demand pursuant to the Federal Rules of Civil Procedure in a case in which NARA is a party, in which case you must comply with the requirements of that rule) should be submitted at least 45 days before the date that records or testimony is required. Demands submitted in less than 45 days before records or testimony is required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(f) Failure to cooperate in good faith to enable the General Counsel to make an informed decision may serve as the basis for a determination not to comply with your demand.

(g) The information collection contained in this section has been approved by the Office of Management and Budget under the Paperwork Reduction Act under the control number 3095–0038.

§ 1251.12 How does NARA process your demand?

(a) After service of a demand for production of records or for testimony, an appropriate NARA official reviews the demand and, in accordance with the provisions of this, determines whether, or under what conditions, to produce records or authorize the employee to testify on matters relating to agency information.

(b) NARA processes demands in the order in which we receive them. NARA will not complete and return certifications, affidavits, or similar documents submitted with a demand for records, but if requested will certify records in accordance with NARA's published fee schedule at 36 CFR part 1258. Absent exigent or unusual circumstances, NARA responds within 45 days from the date of receipt. The time for response depends upon the scope of the demand.

(c) The General Counsel may grant a waiver of any procedure described by this part where a waiver is considered necessary to promote a significant interest of NARA or the United States or for other good cause.

§ 1251.14 Who makes the final determination on compliance with demands for records or testimony?

The General Counsel makes the final determination on demands to employees for testimony. The appropriate NARA official authorized to accept service, as described in § 1251.8, makes the final determination on demands for the production of records. The NARA official notifies the requester and, as necessary, the court or other authority of the final determination and any conditions that may be imposed on the release of records or information, or on the testimony of a NARA employee. If the NARA official deems it appropriate not to comply with the demand, the official communicates the reasons for the noncompliance as appropriate.

§ 1251.16 Are there any restrictions that apply to testimony?

(a) The General Counsel may impose conditions or restrictions on the testimony of NARA employees including, for example, limiting the areas of testimony or requiring the requester and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal or will only be used or made available in the particular legal proceeding for which testimony was requested. The General Counsel may also require a copy of the transcript of testimony at the requester's expense.

(b) NARA may offer the employee's written declaration instead of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the General Counsel, the employee must not:

(1) Disclose confidential or privileged information; or

(2) For a current NARA employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of NARA unless testimony is being given on behalf of the United States.

§ 1251.18 Are there any restrictions that apply to the production of records?

(a) The General Counsel may impose conditions or restrictions on the release of records and agency information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or of a confidentiality agreement must be acceptable to the General Counsel. In cases where protective orders or confidentiality agreements have already been executed, NARA may condition the release of records and agency information on an amendment to the existing protective order or confidentiality agreement.

(b) Typically, original NARA records will not be produced in response to a demand. Instead of the original records, NARA provides certified copies for evidentiary purposes (see 28 U.S.C. 1733; 44 U.S.C. 2116). Such copies must be given judicial notice and must be admitted into evidence equally with the originals from which they were made (see 44 U.S.C. 2116). If the General Counsel so determines, under exceptional circumstances, original NARA records may be made available for examination in response to a demand, but they are not to be presented as evidence.

§ 1251.20 Are there any fees associated with producing records or providing testimony?

(a) *Generally.* The General Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs to NARA.

(b) *Fees for records.* Fees for producing records include fees for searching, reviewing, and duplicating records, costs of attorney time spent in reviewing the demand or request, and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. Costs for employee time are calculated on the basis of the hourly pay of the employee (including all pay, allowance, and benefits). Fees for duplication are the same as those charged by NARA in part 1258 of this title.

(c) *Witness fees.* Fees for attendance by a witness include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees are determined based upon the rule of the Federal district court closest to the location where the witness appears.

(d) *Payment of fees.*

(1) Witness fees for current NARA employees must be submitted to the General Counsel and made payable to the Treasury of the United States.

(2) Fees for the production of records, including records certification fees, must be submitted to the official who makes the final determination on demands for the production of records, as described in § 1251.14, and made payable to the National Archives Trust Fund (NATF).

(3) Applicable fees paid to former NARA employees providing testimony should be paid directly to the former employee in accordance with 28 U.S.C. 1821 or other applicable statutes.

(e) *Certification (authentication) of copies of records.* NARA may certify that records are true copies in order to facilitate their use as evidence. Request certified copies from NARA at least 45 days before the date they are needed. We charge a certification fee for each document certified.

(f) *Waiver or reduction of fees.* The General Counsel, in his or her sole discretion, may, upon a showing of good cause, waive or reduce any fees in connection with the testimony, production, or certification of records.

(g) *De minimis fees.* Fees are not assessed if the total charge is $10.00 or less, or as otherwise stated in NARA policy.

§ 1251.22 Are there any penalties for providing records or testimony in violation of this part?

(a) An employee who discloses official records or information or gives testimony relating to official information, except as expressly authorized by NARA or as ordered by a Federal court after NARA has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Additionally, former NARA employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

(b) A current NARA employee who testifies or produces official records and information in violation of this part is subject to disciplinary action.

PART 1256—PUBLIC AVAILABILITY AND USE OF FEDERAL RECORDS

■ 4. The authority citation for part 1256 continues to read as follows:

Authority: 44 U.S.C. 2101–2118; 22 U.S.C. 1461(b); 5 U.S.C. 552; E.O. 12958 (60 FR 19825, 3 CFR, 1995 Comp., p. 333; E.O. 13292, 68 FR 15315, 3 CFR, 2003 Comp., p. 196; E.O. 13233, 66 FR 56023, 3 CFR, 2001 Comp., p. 815.

§ 1256.4 [Removed]

■ 5. Remove § 1256.4.

Dated: December 19, 2008.

Adrienne C. Thomas,

Deputy Archivist of the United States.

[FR Doc. E8–30885 Filed 12–24–08; 8:45 am]

BILLING CODE 7515–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–9, CP2009–10, CP2009–11; Order No. 153]

International Mail Contracts

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Global Direct Contracts to the Competitive Product List and announcing the Postal Service's execution of two related contracts. These actions are consistent with changes in a recent law governing postal operations and a recent Postal Service request. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective December 29, 2008.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: *Regulatory History,* 73 FR 74213 (December 5, 2008).

I. Background

The Postal Service seeks to add a new product identified as Global Direct Contracts to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

On November 17, 2008, the Postal Service filed a formal request pursuant to 37 U.S.C. 3642 and 39 CFR 3020 *et seq.* to add Global Direct Contracts to the Competitive Product List.[1] The Postal Service indicates that Governors' Decision No. 08–10, July 16, 2008, establishes prices and classifications not of general applicability for Global Direct Contracts.[2] The Request has been assigned Docket No. MC2009–9.

[1] Request of the United States Postal Service to Add Global Direct Negotiated Service Agreements to the Competitive Products List, and Notice of Filing (Under Seal) Two Functionally Equivalent Agreements, November 17, 2008 (Request).

[2] *See* Docket No. MC2008–7, Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Direct, Global Bulk Economy, and Global Plus Contracts, July 16, 2008 (Governors' Decision No. 08–10), establishing prices and classifications not of general applicability for Global Direct and Global Bulk Economy Contracts, as well as for

The Postal Service contemporaneously filed two agreements related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request at 1. The agreements have been assigned Docket Nos. CP2009–10 and CP2009–11.

In support of its Request, the Postal Service filed the following materials: (1) A Statement of Supporting Justification as required by 39 CFR 2020.32; [3] (2) certifications of compliance with 39 U.S.C. 3633(a); [4] (3) two Global Direct Contracts agreements (under seal); and (4) supporting financial data tables (under seal). The Request incorporates by reference Governors' Decision No. 08–10 and the record of proceedings in Docket No. MC2008–7.[5]

In the Statement of Supporting Justification, Frank Cebello, Executive Director, Global Business Management, asserts that each contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment 1, at 2. Thus, Mr. Cebello contends there will be no issue of subsidization of competitive products by market dominant products as a result of these agreements. *Id.*

The Postal Service filed much of the supporting materials, including Governors' Decision 08–10 (in Docket No. MC2008–7), the two Global Direct Contracts agreements at issue, and the financial data tables supporting those agreements, under seal. In its Request, the Postal Service maintains that the agreements and related financial information, including the customers' names and the accompanying analyses that provide prices, terms, conditions, and financial projections, should remain under seal. *Id.* at 2–4.

In Order No. 137, the Commission gave notice of the three dockets, appointed a public representative, and provided the public with an opportunity to comment.[6] The Postal Service, in response to Chairman's Information Request No. 1,[7] filed supplemental materials on December 5, 2008.[8]

II. Comments

Initial comments were filed by the Public Representative.[9] William Gensburg filed comments in his capacity as Joint Managing Director, International Transport Solutions, Inc. (International Transport) and subsequently in his capacity as Postal Committee Chair, Express Delivery and Logistics Association (XLA).[10] The Postal Service and the Public Representative filed reply comments.[11]

The Public Representative Comments include discussion of the Global Direct Contracts product in general, and the adequacy of cost coverage in the CP2009–10 and CP2009–11 agreements. Public Representative Comments at 2–7. The Public Representative expresses concern that the Postal Service can use Universal Postal Union terminal dues rates [12] for competitive products like Global Direct Contracts, while Universal Postal Union terminal dues rates are not available to competitors. *Id.* at 7. The Public Representative believes that use of Universal Postal Union terminal dues rates may allow the Postal Service to hinder competition in the market for these types of competitive products. *Id.* at 8.

International Transport echoes the Public Representative's concerns regarding the Postal Service's use of Universal Postal Union terminal dues rates for a competitive product, and believes such an advantage does not comport with the PAEA. International Transport Comments at 1. Both ask the Commission to open a public inquiry into appropriateness of accessing Universal Postal Union terminal dues rates for competitive products. Public Representative Reply Comments at 2, International Transport Comments at 2. XLA comments that the Postal Service enjoys a competitive advantage as it is represented at the State Department, which is responsible for overall formulation of international postal policy. XLA Comments. However, XLA acknowledges that its comments concerning the Postal Service's representation at the State Department may be beyond than the issues addressed in Docket No. MC2009–9. *Id.*

The Public Representative states that these agreements ''overtly comport with the requirement that they will generate sufficient revenue to cover attributable costs for the services provided,'' and add to the 5.5 percent minimum institutional cost coverage. Public Representative Comments at 5. The Public Representative acknowledges that, based on a review of the materials the Postal Service filed under seal, these agreements are functionally equivalent. *Id.* at 6. The Public Representative also encourages the Commission's approval of these agreements. Public Representative Reply Comments at 2.

III. Commission Analysis

In reaching its findings and conclusions, the Commission has reviewed the Request, the agreements and the financial analyses provided under seal, and all comments.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Global Direct Contracts to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements, including a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Global Direct Contracts as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

The Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

Global Plus Contracts 2, which combines Global Direct and Global Bulk Economy services. In that proceeding, the Postal Service indicated that until it entered into contracts with customers for Global Direct, it would not ask the Commission to establish an individual classification for Global Direct Contracts. *See Id.* at 1, n.1.

[3] Attachment 1 to the Request.

[4] Attachments 2 and 3 to the Request.

[5] The Public Representative raises an important point that for completeness, copies of all documents relevant to Docket No. MC2009–9 should be filed within this docket. *See* Public Representative Comments in Response to Order No. 137, December 2, 2008, at 6 (Public Representative Comments).

[6] PRC Order No. 137, Notice and Order Concerning Global Direct Contracts Negotiated Service Agreements, November 20, 2008 (Order No. 137).

[7] Chairman's Information Request No. 1 and Notice of Filing of Questions Under Seal, December 1, 2008.

[8] Notice of United States Postal Service of Filing of Responses to Chairman's Information Request No. 1, December 5, 2008.

[9] Public Representative Comments in Response to Order No. 137, December 2, 2008 (Public Representative Comments).

[10] Comments of William Gensburg of International Transport Solutions, Inc. Pursuant to the PRC Order 137, December 4, 2008 (International Transport Comments); Comments of Express Delivery and Logistics Association Reflecting Comments by the USPS and Public Representative Pursuant to the PRC Order 137, December 11, 2008 (XLA Comments).

[11] Reply of United States Postal Service to Comments in Response to Order No. 137, December 9, 2008 (Postal Service Reply Comments). Reply Comments by the Public Representative in Response to Order No. 137, December 9, 2008 (Public Representative Reply Comments).

[12] The Universal Postal Union is a specialized agency of the United Nations that facilitates the exchange of international mail among its 191 member countries. Terminal dues are payments made between postal administrations for the costs incurred by the destination administration to deliver international letter mail weighing up to 4.4 pounds.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment 1, at 3. The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar international shipping services. *Id.* Finally, the Postal Service states that there are multiple market options for international shipping services including private consolidators, freight forwarders and integrators, all which offer services analogous to the agreements at issue. *Id.* at 4. Accordingly, the Postal Service states that since the market for international shipping services similar to Global Direct Contracts is highly competitive, and served by large shipping companies, it will not likely have any negative impact on small business concerns. *Id.* at 4–5.

The Public Representative supports the proposed classification of Global Direct Contracts as a competitive product. Public Representative Reply Comments at 2. International Transport and XLA do not believe that classification of Global Direct Contracts as a competitive product comports with the PAEA, yet they do not propose an alternative classification. International Transport Comments at 1, XLA Comments. The Public Representative and International Transport both express concern that the Postal Service may be able to access Universal Postal Union terminal dues for competitive products. Public Representative Comments at 7–10, International Transport Comments.

In response to the Public Representative's and International Transport's concern, the Postal Service contends that is not accessing Universal Postal Union terminal dues rates for the Global Direct Contracts product. Postal Service Reply Comments at 2. The Postal Service maintains that it is in the same position as any private entity that wishes to negotiate rates with the foreign posts for similar services. *Id.*

The Public Representative's and International Transport's objection that the Postal Service has regulatory advantages is beyond the scope of this proceeding. The issues presented by the Postal Service's filing are whether the proposed agreements are consistent with the policies of sections 3632, 3633, and 3642 of title 39. The issues raised by the Public Representative, XLA, and International Transport concerning competitive advantages enjoyed by the Postal Service are beyond the scope of this proceeding.

Having considered the statutory requirements, the support offered by the Postal Service, and all comments, the Commission finds that Global Direct Contracts is appropriately classified as a competitive product and should be added to the Competitive Product List.[13]

Functional equivalence. The Postal Service claims the agreements in Docket Nos. CP2009–10 and CP2009–11 are functionally equivalent in that they share similar cost and market characteristics, encompass customers who send mail directly to foreign destinations and desire that their mail bear the indicia of the foreign country, and cover the same services to the same foreign destination. Request at 5–6. The Postal Service requests that the Commission classify these agreements as one product on the Competitive Products List in the Mail Classification Schedule. *Id.* at 2, 5. The Public Representative agrees that these agreements are functionally equivalent. Public Representative Comments at 6.

Having evaluated the nature of these agreements, the comments, and the supporting financial analyses, the Commission finds that the agreements submitted in Docket Nos. CP2009–10 and CP2009–11 are functionally equivalent, and are properly included within the Global Direct Contracts product on the Competitive Product List.

Cost considerations. The agreements are predicated on unit costs for major mail functions, *e.g.*, acceptance costs, mail processing, and transportation. The Postal Service believes that the financial analyses submitted in support of the agreements show that the prices charged for pieces subject to Global Direct Contracts cover their attributable costs, do not result in subsidization of competitive products by market dominant products, and increase contribution from competitive products. *See* Request, Attachments 2 and 3.

Based on the data submitted and the Commission's analysis, the Commission finds that both agreements should cover their attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed agreements indicates that they comport with the provisions applicable to rates for competitive products.

Mail Classification Schedule. As part of Governors' Decision No. 08–10, the Postal Service submitted a description of Global Direct Contracts which it describes as

> Contracts giving a rate for mail acceptance within the United States and transportation to a receiving country with the addition by the customer of appropriate foreign postage charged by the receiving country.

The Mail Classification Schedule language proposed by the Postal Service implies that customers using a Global Direct Contracts product would pay the foreign postage directly. However, according to the agreements, the customers affix an image of the appropriate foreign post indicia, while the Postal Service pays the appropriate postage or settlement charge to the foreign post. The draft Mail Classification Schedule language will be modified to reflect the actual payment practice under these agreements.

The Postal Service shall promptly notify the Commission of the scheduled termination dates of these agreements. If either agreement terminates earlier than anticipated, the Postal Service shall inform the Commission prior to the new termination date. The Commission will then remove the product from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Global Direct Contracts as a new product. The agreements specified within Docket Nos. CP2009–10 and CP2009–11 fall within the Global Direct Contracts product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this Order.

It is Ordered:

1. Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11) are added to the Competitive Product List as a new

[13] In Docket No. RM2007–1, the Commission previously accepted and considered comments from multiple parties (XLA included) on the categorization of classes of products, including outbound international mail. *See* PRC Order No. 43, Order Establishing Ratemaking Regulations For Market Dominant and Competitive Products, October 29, 2007. In that docket, XLA argued that outbound and inbound international mail should be categorized as competitive. *Id.* at 85.

product under Negotiated Service Agreements, Outbound International.

2. The Postal Service shall notify the Commission of the scheduled termination date, and update the Commission if the termination date changes for either contract as discussed in this Order.

3. The Secretary shall arrange for the publication of this Order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

By the Commission.

Steven W. Williams,

Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to subpart A of part 3020—Mail Classification to read as follows:

Appendix A to Subpart A of Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products
1000 Market Dominant Product List
First-Class Mail
  Single-Piece Letters/Postcards
  Bulk Letters/Postcards
  Flats
  Parcels
  Outbound Single-Piece First-Class Mail International
  Inbound Single-Piece First-Class Mail International
Standard Mail (Regular and Nonprofit)
  High Density and Saturation Letters
  High Density and Saturation Flats/Parcels
  Carrier Route
  Letters
  Flats
  Not Flat-Machinables (NFMs)/Parcels
Periodicals
  Within County Periodicals
  Outside County Periodicals
Package Services
  Single-Piece Parcel Post
  Inbound Surface Parcel Post (at UPU rates)
  Bound Printed Matter Flats
  Bound Printed Matter Parcels
  Media Mail/Library Mail
Special Services
  Ancillary Services
  International Ancillary Services
  Address List Services
  Caller Service
  Change-of-Address Credit Card Authentication
  Confirm
  International Reply Coupon Service
  International Business Reply Mail Service
  Money Orders
  Post Office Box Service
Negotiated Service Agreements
  HSBC North America Holdings Inc. Negotiated Service Agreement
  Bookspan Negotiated Service Agreement
  Bank of America Corporation Negotiated Service Agreement
  The Bradford Group Negotiated Service Agreement
Market Dominant Product Descriptions
First-Class Mail [Reserved for Class Description]
  Single-Piece Letters/Postcards
  [Reserved for Product Description]
  Bulk Letters/Postcards
  [Reserved for Product Description]
  Flats
  [Reserved for Product Description]
  Parcels
  [Reserved for Product Description]
  Outbound Single-Piece First-Class Mail International
  [Reserved for Product Description]
  Inbound Single-Piece First-Class Mail International
  [Reserved for Product Description]
Standard Mail (Regular and Nonprofit) [Reserved for Class Description]
  High Density and Saturation Letters
  [Reserved for Product Description]
  High Density and Saturation Flats/Parcels
  [Reserved for Product Description]
  Carrier Route
  [Reserved for Product Description]
  Letters
  [Reserved for Product Description]
  Flats
  [Reserved for Product Description]
  Not Flat-Machinables (NFMs)/Parcels
  [Reserved for Product Description]
Periodicals [Reserved for Class Description]
  Within County Periodicals
  [Reserved for Product Description]
  Outside County Periodicals
  [Reserved for Product Description]
Package Services [Reserved for Class Description]
  Single-Piece Parcel Post
  [Reserved for Product Description]
  Inbound Surface Parcel Post (at UPU rates)
  [Reserved for Product Description]
  Bound Printed Matter Flats
  [Reserved for Product Description]
  Bound Printed Matter Parcels
  [Reserved for Product Description]
  Media Mail/Library Mail
  [Reserved for Product Description]
Special Services [Reserved for Class Description]
  Ancillary Services
  [Reserved for Product Description]
  Address Correction Service
  [Reserved for Product Description]
  Applications and Mailing Permits
  [Reserved for Product Description]
  Business Reply Mail
  [Reserved for Product Description]
  Bulk Parcel Return Service
  [Reserved for Product Description]
  Certified Mail
  [Reserved for Product Description]
  Certificate of Mailing
  [Reserved for Product Description]
  Collect on Delivery
  [Reserved for Product Description]
  Delivery Confirmation
  [Reserved for Product Description]
  Insurance
  [Reserved for Product Description]
  Merchandise Return Service
  [Reserved for Product Description]
  Parcel Airlift (PAL)
  [Reserved for Product Description]
  Registered Mail
  [Reserved for Product Description]
  Return Receipt
  [Reserved for Product Description]
  Return Receipt for Merchandise
  [Reserved for Product Description]
  Restricted Delivery
  [Reserved for Product Description]
  Shipper-Paid Forwarding
  [Reserved for Product Description]
  Signature Confirmation
  [Reserved for Product Description]
  Special Handling
  [Reserved for Product Description]
  Stamped Envelopes
  [Reserved for Product Description]
  Stamped Cards
  [Reserved for Product Description]
  Premium Stamped Stationery
  [Reserved for Product Description]
  Premium Stamped Cards
  [Reserved for Product Description]
  International Ancillary Services
  [Reserved for Product Description]
  International Certificate of Mailing
  [Reserved for Product Description]
  International Registered Mail
  [Reserved for Product Description]
  International Return Receipt
  [Reserved for Product Description]
  International Restricted Delivery
  [Reserved for Product Description]
  Address List Services
  [Reserved for Product Description]
  Caller Service
  [Reserved for Product Description]
  Change-of-Address Credit Card Authentication
  [Reserved for Product Description]
  Confirm
  [Reserved for Product Description]
  International Reply Coupon Service
  [Reserved for Product Description]
  International Business Reply Mail Service
  [Reserved for Product Description]
  Money Orders
  [Reserved for Product Description]
  Post Office Box Service
  [Reserved for Product Description]
Negotiated Service Agreements
  [Reserved for Class Description]
  HSBC North America Holdings Inc. Negotiated Service Agreement
  [Reserved for Product Description]
  Bookspan Negotiated Service Agreement
  [Reserved for Product Description]
  Bank of America Corporation Negotiated Service Agreement
  The Bradford Group Negotiated Service Agreement
Part B—Competitive Products
2000 Competitive Product List
Express Mail
  Express Mail
  Outbound International Expedited Services
  Inbound International Expedited Services
  Inbound International Expedited Services 1 (CP2008–7)

Priority Mail
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post
Parcel Select
Parcel Return Service
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)
International Direct Sacks—M-Bags
Global Customized Shipping Services
Inbound Surface Parcel Post (at non-UPU rates)
Canada Post-United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
International Money Transfer Service
International Ancillary Services
Special Services
Premium Forwarding Service
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Parcel Return Select & Parcel Return Service Contract 1 (MC2009–11 and CP2009–13)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Priority Mail Contract 4 (MC2009–5 and CP2009–6)
Outbound International
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23 and CP2008–24)
Global Plus Contracts
Global Plus 1 (CP2008–9 and CP2008–10)
Global Plus 2 (MC2008–7, CP2008–16 and CP2008–17)
Global Direct Contracts (MC2009–9, CP2009–10 and CP2009–11)
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)
Competitive Product Descriptions
Express Mail
[Reserved for Group Description]
Express Mail
[Reserved for Product Description]
Outbound International Expedited Services
[Reserved for Product Description]
Inbound International Expedited Services
[Reserved for Product Description]
Priority
[Reserved for Product Description]
Priority Mail
[Reserved for Product Description]
Outbound Priority Mail International
[Reserved for Product Description]
Inbound Air Parcel Post
[Reserved for Product Description]
Parcel Select
[Reserved for Group Description]
Parcel Return Service
[Reserved for Group Description]
International
[Reserved for Group Description]
International Priority Airlift (IPA)
[Reserved for Product Description]
International Surface Airlift (ISAL)
[Reserved for Product Description]
International Direct Sacks—M-Bags
[Reserved for Product Description]
Global Customized Shipping Services
[Reserved for Product Description]
International Money Transfer Service
[Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates)
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
International Insurance
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Group Description]
Domestic
[Reserved for Product Description]
Outbound International
[Reserved for Group Description]
PART C—GLOSSARY OF TERMS AND CONDITIONS [Reserved]
PART D—COUNTRY PRICE LISTS FOR INTERNATIONAL MAIL [Reserved]

[FR Doc. E8–30736 Filed 12–24–08; 8:45 am]
BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0389; FRL–8752–8]

Approval of Air Quality Implementation Plans; Oklahoma; Recodification of Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving portions of the revisions to the Oklahoma State Implementation Plan (SIP) submitted on February 14, 2002. Most of the revisions are administrative in nature and modify redundant or incorrect text within the SIP. The revisions also include renumbered or recodified portions of the SIP and new sections that incorporate Federal rules. We are approving the revisions in accordance with the requirements of section 110 of the Clean Air Act (the Act) and EPA's regulations.

DATE: Comments must be received on or before January 28, 2009. Direct final rule will be effective February 27, 2009 without further notice unless EPA receives adverse comments by January 28, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2006–0389, by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov*.
- Follow the online instructions for submitting comments.
- *EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6coment.htm*. Please click on ''6PD (Multimedia)'' and select ''Air'' before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7242.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2006–0389. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly

to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The State submittal is voluminous and only the portions of the submittal being acted upon in this **Federal Register** are included in the Regulations.gov docket. The entire State submittal is available for public viewing at the Environmental Protection Agency Region 6 Office at the address above. The submittal will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 or Mr. Carl Young at 214–665–6645 or Ms. Carrie Paige at 214–665–6521 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection during official business hours, by appointment, at the Oklahoma Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101–1677.

FOR FURTHER INFORMATION CONTACT: Emad Shahin, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–6717; fax number 214–665–7263; e-mail address *shahin.emad@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''our,'' and ''us'' refers to EPA.

Outline

I. What Action Is EPA Taking?

Today we are approving portions of the revisions to the Oklahoma SIP, submitted by the Oklahoma Secretary of the Environment on February 14, 2002. The revisions affect the Oklahoma Administrative Code (OAC), the official compilation of agency rules and executive orders for the State of Oklahoma. The majority of revisions are administrative in nature, stemming from the State's agency-wide ''re-write/de-wrong'' initiative, which served to repeal or otherwise modify redundant or incorrect language within the OAC. The variety of revisions include recodified portions of the Oklahoma SIP, new sections that incorporate federal rules, deletions of duplicative and outdated rules, and edits that simplify text and correct errors. We are approving these revisions in accordance with section 110 of the Act. EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on February 27, 2009 without further notice unless we receive relevant adverse comment by January 28, 2009. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. Background

The SIP is a set of air pollution regulations, control strategies, and technical analyses developed by the state to ensure that the state meets the National Ambient Air Quality Standards (NAAQS). These ambient standards are established under section 109 of the Act and they currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. The SIP is required by section 110 of the Act and can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

On November 3, 1999, we approved portions of the Oklahoma Department of Environmental Quality (ODEQ) Air Pollution Control Rules adopted by the State Legislature into the Oklahoma SIP and published those rules in Volume 64 of the **Federal Register** (FR), beginning on page 56929 (denoted 64 FR 56929). The date of the State's submittal to EPA was May 16, 1994. The revisions were codified in the OAC under Title 252 (Department of Environmental Quality), Chapter 100 (Air Pollution Control) and replaced most of the regulations in the Oklahoma SIP. We took no action on items in the submittal that were neither in, nor equivalent to, the Oklahoma SIP-approved regulations at that time; that is, we took no action on 252:100–7 (Permits), 252:100–8 (Operating Permits), 252:100–11 (Alternative Emissions Reduction Permits), 252:100–21 (Particulate Matter Emissions from Wood-Waste Burning Equipment), 252:100–41 (Control of Emission of Hazardous and Toxic Air Contaminants), and Appendix D (Particulate Matter Emission Limits for Wood Waste Burning Equipment). Per the Governor's request dated October 5, 1999, the Subchapters and Appendix listed above are hereby formally withdrawn from the 1994 submittal.

On November 8, 1999, (see 64 FR 60683) we approved revisions to the Oklahoma visibility protection plan in the Oklahoma SIP. This action amended section 1.4.4 of Oklahoma SIP-approved Regulation 1.4.

On August 2, 2000, (see 65 FR 47326) we published a Final rule that revised the format of *U.S. Code of Federal Regulations* (CFR), title 40, part 52, subpart LL, for materials submitted by Oklahoma that were incorporated by reference (IBR) into the Oklahoma SIP.

This revised the organization of the Oklahoma ''Identification of Plan'' in 40 CFR 52.1920 to more clearly identify the enforceable elements of the SIP. The August 2000 rulemaking is the most recent Oklahoma SIP revision approved in the FR.

The February 14, 2002 submittal incorporates revisions to OAC Title 252, Chapters 4 (Rules of Practice and Procedure) and 100 (Air Pollution Control). The rules in this submittal were promulgated in compliance with the Oklahoma Administrative Procedures Act, published in the Oklahoma Register, the official state publication for rulemaking actions, and submitted in accordance with the requirements in 40 CFR Part 51. For more specific detail, see our Technical Support Document (TSD) in the docket for this rulemaking. In this rulemaking we are taking no action on the following: Chapter 4 (Rules of Practice and Procedure): Subchapters 1 (General Procedures), Subchapter 7 (Environmental Permit Process), and Appendix C (Permitting Process Summary); Chapter 100 (Air Pollution Control): Subchapter 5 (Fees for Minor and Part 70 Sources), Subchapter 7 (Permits for Minor Sources), Subchapter 8 (Permits for Part 70 Sources), and Subchapter 9 (Excess Emissions Reporting Requirements). These 6 subchapters and appendix will be addressed in separate actions.

III. Summary of Changes to the Oklahoma SIP

A. OAC 252:4, Rules of Practice and Procedure and Appendices A, B, and D

Chapter 4 is new to the SIP and provides administrative procedures for permit issuance, public notice, and administrative proceedings. Chapter 4 was adopted by the State to meet the requirements of the Oklahoma Administrative Procedures Act, which requires each agency to adopt rules describing its organization, method of operation, and methods by which the public may obtain or provide information to the agency. These rules also specify the requirements of all formal and informal procedures available, including a description of forms and instructions.

Revisions to Subchapters 3 (Meetings and Public Forums), 5 (Rulemaking) and 9 (Administrative Proceedings) are new but incorporate text from subchapters 1, 2, and 3 under the previous version. Since Oklahoma is merely reorganizing these provisions, EPA finds that these revisions make no substantive change to previously approved provisions.

B. OAC 252:100–3, Air Quality Standards and Increments

Revises the values for particulate matter in Table 252:100–3–4(b) to adopt EPA's Prevention of Significant Deterioration (PSD) increments in accordance with 40 CFR 51.166. PSD increments limit increases in pollutant concentration due to new sources. This is a substantive change to comply with the PSD regulations and we are approving this change.

C. OAC 252:100–13, Open Burning

Revisions to Subchapter 13 delete redundant text, renumber or recodify existing text, and apply format and minor edits; these changes are not substantive. ''Domestic refuse'' and ''Land clearing operation'' are added to the definitions and a section on ''Disaster relief'' is added. We have examined these changes and have determined that they should be approved because they are non-substantive in nature or enhance the SIP by regulating activities not previously regulated.

D. OAC 252:100–17, Incinerators

Revises Subchapter 17 and Appendices A and B. The revisions include recodification of text, and adding new definitions. The opacity section with references to Ringelmann standards are deleted and replaced by an opacity limit section in 252:100–25–3. A new section titled ''Alternative incinerator design requirements'', which includes references to federal test methods is added. The appendices from section 17–6 (which has been revoked) are relocated to section 17–4. These changes clarify and improve the enforceability of the rule.

E. OAC 252:100–19, Control of Emission of Particulate Matter

Revises Subchapter 19 and Appendices C, D, and G. The revised Subchapter 19 features inserted text from Subchapters 21 and 27 (which are now revoked), a revised title, new definitions, and a Permit by Rule (PBR) for facilities that emit particulate matter and are not subject to NSPS, NESHAP, MACT, or other PBR. A PBR simplifies and streamlines the permitting process.

Appendices C and D delete the logarithmic graphic charts and replace them with tabulated data, making them easier to read and use. Appendix G moves from Subchapter 27 to Subchapter 19. EPA has reviewed the PBR for particulate matter sources and has determined that it is consistent with EPA's permitting requirement for minor sources at 40 CFR 51.160.

F. OAC 252:100–23, Control of Emissions From Cotton Gins

Revisions to Subchapter 23 include minor edits, format changes, and a PBR is added. EPA has reviewed the requirement for the PBR for cotton gins and found it to be consistent with EPA's permitting requirements.

G. OAC 252:100–24, Particulate Matter Emissions From Grain, Feed or Seed Operations

Revisions to Subchapter 24 establish industry-specific emission and control standards, new definitions and a PBR section. For grain, feed, and seed operations a new Appendix L contains PM–10 emission factors for PBR grain elevators. Additional changes concern specific opacity standards for these operations. The revisions are consistent with 40 CFR part 60, subpart DD and Appendix A, and EPA's permitting requirement for minor sources at 40 CFR 51.160.

H. OAC 252:100–25, Smoke, Visible Emissions and Particulates

Revisions to Subchapter 25 include grammatical edits, format revisions and an IBR of the federal opacity monitoring requirements for fluid bed catalytic cracking unit catalyst regenerators and fossil fuel-fired steam generators, as specified in 40 CFR Part 51, Appendix P. The revisions make the SIP consistent with federal rules.

I. OAC 252:100–27, Particulate Matter Emissions From Industrial and Other Processes and Operations

The text in Subchapter 27 is moved to Subchapters 7, 8, 17, 19, 23, 25 and 43, and Subchapter 27 is revoked. Because the requirements are only moved, the revocation of this section does not weaken the SIP.

J. OAC 252:100–29, Control of Fugitive Dust

Revisions to Subchapter 29 include minor edits and a new paragraph that provides examples of reasonable precautions to minimize pollution from fugitive dust. These are minor non-substantive changes.

K. OAC 252:100–31, Control of Emission of Sulfur Compounds

The revision to Subchapter 31 amends 252:100–31–25(c)(2) to provide a new limit for sulfur oxides emissions from new sulfur recovery plants operating in conjunction with other processes. The previous limit was 20 lb/ton of sulfur processed, maximum of two hours average. The revision changes that rate to values calculated based on an equivalent sulfur feed rate (in long tons

per day) in the same manner as for natural gas processing in 252:100–31–25(c)(1) of this section.

L. OAC 252:100–33, Control of Emission of Nitrogen Oxides

Revisions to Subchapter 33 include the addition of definitions and a new section on applicability, which provide clarity. Editorial corrections are made to 100–33–2 (Emission Limits). Section 100–33–3 (Performance Testing) is revoked as it duplicates provisions in 100–43. These revisions clarify the SIP and improve it, therefore, they should be approved.

M. OAC 252:100–35, Control of Emission of Carbon Monoxide

Revisions to Subchapter 35 specify sources that are primary contributors of carbon monoxide emissions. Other changes include minor edits and the replacement of ''foundry cupola'' with ''gray iron cupola.'' Section 35–3 is revoked as it duplicates provisions in Subchapters 8 and 43. These changes are not substantive in nature but serve to clarify the rule.

N. OAC 252:100–37, Control of Emission of Volatile Organic Compounds (VOCs)

Revises Subchapter 37 by redefining the term ''volatile organic compound (VOC)'' and substituting ''VOC'' for ''organic materials,'' ''organic solvents,'' and ''hydrocarbons;'' deleting 252:100–37–3(a), which required new minor sources to apply best available control technology (BACT), since other rule and PBR requirements insure an adequate control level; exempting of methanol storage vessels at a drilling or production facility for use on site in 252:100–37–4(c); adding 252:100–37–15(c), which exempts VOC storage vessels that are subject to 40 CFR part 60 subparts K, Ka, or Kb; adding 252:100–37–16(c), which exempts VOC loading facilities subject to 40 CFR part 60 subpart XX or 40 CFR part 63 subpart R; deleting 252:100–37–25(c), which allows the emission of 3,000 pounds (lbs) per day or 450 lbs per hour of organic materials before controls are required; revising the alternate standard for coatings in 252:100–37–25(d); correcting 252:100–37–36 such that no emission of hydrocarbons or organic material is allowed from fuel-burning or refuse-burning equipment; adding 252:100–37–38(b), which exempts pumps and compressors subject to 40 CFR part 60 subparts VV, GGG, or KKK; and adding Part 9, the PBR for VOC storage and loading facilities. These revisions improve the SIP by eliminating exemptions and overlap with federal standards, and adding applicability and PBR requirements.

O. OAC 252:100–39, Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas

Revises Subchapter 39 by defining the term ''VOC'' and substituting VOC for ''organic materials,'' ''organic solvents,'' ''volatile organic solvent (VOS),'' and in some instances ''hydrocarbons.'' The new definition complies with 40 CFR 51.100(s). In addition, the revisions exempt storage vessels subject to the equipment standards in 40 CFR part 60 subparts Ka or Kb or the equipment standards in 40 CFR part 63 subparts CC or G from the requirements of 252:100–39–30; add minimum annual throughput of 120,000 gallons and minimum storage capacity of 10,000 gallons for determining applicability with 252:100–39–41(c); and clarify the definition of ''aerospace'' by adding ''rework or repair.'' These revisions prevent overlap with the federal NSPS requirements while maintaining the stringency of the rules.

P. OAC 252:100–45, Monitoring of Emissions

Revises Subchapter 45 to allow the use of any credible evidence to demonstrate compliance with or establish violations in enforcing the Oklahoma SIP. These revisions are consistent with EPA's Credible Evidence Revisions promulgated February 24, 1997 at 62 FR 8314 and codified at 40 CFR 51.212, 52.12, 52.33, 60.11 and 61.12.

Q. OAC 252:100, Appendices

1. Appendix A—Allowable Emissions for Incinerators With Capacities in Excess of 100/lbs/hr and Appendix B—Allowable Emissions for Incinerators With Capacities Less Than 100 lbs/hr

Makes a reference to Appendices A and B in section 252:100–17–4. These appendices were formerly referenced at 252:100–17–6, which is revoked by today's action. There are no revisions to these appendices; they are simply being referenced 100–17–4.

2. Appendix C—Particulate Matter Emission Limits for Fuel-Burning Equipment and Appendix D—Particulate Matter Emission Limits for Wood-Waste Burning Equipment

Revises Appendices C and D, which are referenced in section 252:100–19–4 and 252:100–19–10, respectively. Appendices C and D are modified from logarithmic graphic tables to tabular charts, making them easier to read and use.

3. Appendix E. Primary Ambient Air Quality Standards and Appendix F. Secondary Ambient Air Quality Standards

Oklahoma submitted two revisions to Appendices E and F. The first revisions, adopted by Oklahoma effective June 1, 1999, match the NAAQS for PM and ozone, promulgated on July 18, 1997 at 62 FR 38651. The second revisions to Appendices E and F, adopted by Oklahoma effective June 12, 2000, restore the primary and secondary ambient air quality standards to previous levels, which are neither current nor federally enforceable. Therefore, we are approving only the revisions adopted by Oklahoma effective June 1, 1999, which are consistent with the NAAQS for ozone and PM.

4. Appendix G. Allowable Rate of Emissions

The February 14, 2002, submittal references Appendix G in section 252:100–19–12. Appendix G was formerly referenced in Section 252:100–27–5, which is revoked by today's action. There are no revisions to Appendix G; it is simply being relocated to 252:100–19–12.

IV. Final Action

We are approving portions of the revisions to the Oklahoma SIP submitted to EPA on February 14, 2002, which apply to OAC 252:4, Rules of Practice and Procedure, and OAC 252:100, Air Pollution Control. These revisions replace the corresponding regulations in the Oklahoma SIP found in Chapter 100, Oklahoma Air Control Rules and in Regulation 1.4, Air Resources Management Permits Required. The revisions are consistent with the Act and EPA policy.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under

Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 27, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking.

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxides, Ozone, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Dated: November 25, 2008.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart LL—Oklahoma

■ 2. In § 52.1920 the table in paragraph (c) entitled ''EPA APPROVED OKLAHOMA REGULATIONS'' is amended as follows:

■ a. Following the entry for section 3.8(c), by revising the centered heading entry ''Oklahoma Administrative Code, Title 252. Department of Environmental Quality, Chapter 100 (OAC 252:100). Air Pollution Control (Oklahoma Air Pollution Control Rules)'' to read ''OKLAHOMA ADMINISTRATIVE CODE, TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY'' immediately followed by a new centered heading entry ''CHAPTER 4 (OAC 252:4). RULES OF PRACTICE AND PROCEDURE'' followed by new entries for ''Subchapter 3. Meetings and Public Forums,'' ''Subchapter 5. Rulemaking,'' ''Subchapter 9. Administrative Proceedings,'' followed by new centered heading ''Appendices for OAC 252: Chapter 4,'' followed by new entries for ''252:4, Appendix A,'' ''252:4, Appendix B,'' and ''252:4, Appendix D,'' followed by a new centered heading ''CHAPTER 100 (OAC 252:100). AIR POLLUTION CONTROL'';

■ b. Under new centered heading ''CHAPTER 100 (OAC 252:100). AIR POLLUTION CONTROL,'' by revising the entries under Subchapter 3, Subchapter 13, and Subchapter 17;

■ c. By revising the title of Subchapter 19 to read ''Subchapter 19. Control of Emission of Particulate Matter;'' and revising the entries under Subchapter 19;

■ d. By revising the entries under Subchapter 23;

■ e. Immediately following section 252:100–23–7, by adding a new centered heading ''Subchapter 24, Particulate Matter Emissions From Grain Feed or Seed Operations'' followed by new entries for sections 252:100–24–1 to 252:100–24–7;

■ f. By revising the title of Subchapter 25 to read ''Subchapter 25. Visible Emissions and Particulate'' and revising the entries under Subchapter 25;

■ g. By removing the centered heading ''Subchapter 27. Particulate Matter Emissions From Industrial and Other Processes and Operations,'' and removing entries 252:100–27–1 to 252:200–27–5 under Subchapter 27;

■ h. By revising the entries under Subchapter 29, Subchapter 31, Subchapter 33, Subchapter 35, Subchapter 37, Subchapter 39, and Subchapter 45;

■ i. By revising the centered heading ''Appendices'' to read ''OAC 252: Chapter 100 Appendices;'' and by revising the entries for Appendix A, Appendix B, Appendix C, Appendix E, and Appendix F, and by adding new entries for Appendix D and Appendix L.

■ The additions and revisions read as follows:

§ 52.1920 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED OKLAHOMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
OKLAHOMA AIR POLLUTION CONTROL REGULATIONS				
Regulation 1.4. Air Resources Management Permits Required				
*	*	*	*	*
Regulation 3.8. Control of Emission of Hazardous Air Contaminants				
*	*	*	*	*
3.8(c)	Emission Standards for Hazardous Air Contaminants.	4/19/1982	8/15/1983, 48 FR 36819.	
OKLAHOMA ADMINISTRATIVE CODE, TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY				
CHAPTER 4 (OAC 252:4). RULES OF PRACTICE AND PROCEDURE				
Subchapter 3. Meetings and Public Forums				
252:4–3–1	Meetings	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–3–2	Public forums	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
Subchapter 5. Rulemaking				
252:4–5–1	Adoption and revocation	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–5–2	Rule development	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–5–3	Petitions for rulemaking	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–5–4	Notice of permanent rulemaking	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–5–5	Rulemaking hearings	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–5–6	Council actions	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–5–7	Presentation to Board	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–5–8	Board actions	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–5–9	Rulemaking record	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
Subchapter 9. Administrative Proceedings				
PART 1. ENFORCEMENT				
252:4–9–1	Notice of Violation (“NOV”)	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–9–2	Administrative compliance orders.	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–9–3	Determining penalty	6/11/2001	12/29/2008 [Insert FR page number where document begins].	

EPA APPROVED OKLAHOMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
252:4–9–4	Assessment orders	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–9–5	Considerations for self-reporting of noncompliance.	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
	PART 3. INDIVIDUAL PROCEEDINGS			
252:4–9–31	Individual proceedings filed by DEQ.	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–9–32	Individual proceedings filed by others.	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–9–33	Scheduling and notice of hearings.	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–9–34	Administrative Law Judges and Clerks.	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–9–35	Service	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–9–36	Responsive pleading	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–9–37	Prehearing conferences	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–9–38	Discovery	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–9–39	Subpoenas	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–9–40	Record	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–9–41	Motions	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–9–42	Continuances	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–9–43	Summary judgment	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–9–44	Default	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–9–45	Withdrawal and dismissal	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–9–46	Orders in administrative hearings.	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
	PART 5. AIR QUALITY ADVISORY COUNCIL HEARINGS			
252:4–9–51	In general	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–9–52	Individual proceedings	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4–9–53	Variance	6/11/2001	12/29/2008 [Insert FR page number where document begins].	

EPA APPROVED OKLAHOMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
252:4–9–54	State implementation plan hearings.	6/11/2001	12/29/2008 [Insert FR page number where document begins].	NOT in SIP: in the first sentence, the phrase ''under 252:100–11'' and the last sentence which begins with ''Additional requirements for a SIP hearing * * *.''
Appendices for OAC 252:Chapter 4				
252:4, Appendix A	Petition for Rulemaking Before the Environmental Quality Board.	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4, Appendix B	Petition for Declaratory Ruling	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
252:4, Appendix D	Style of the Case in an Individual Proceeding.	6/11/2001	12/29/2008 [Insert FR page number where document begins].	
CHAPTER 100 (OAC 252:100). AIR POLLUTION CONTROL				
Subchapter 1. General Provisions				
*	*	*	*	*	*	*
Subchapter 3. Air Quality Standards and Increments				
252:100–3–1	Purpose	5/26/1994	11/3/1999, 64 FR 59629.	
252:100–3–2	Primary standards	5/26/1994	11/3/1999, 64 FR 59629.	
252:100–3–3	Secondary standards	5/26/1994	11/3/1999, 64 FR 59629.	
252:100–3–4	Significant deterioration increments.	7/1/1996	12/29/2008 [Insert FR page number where document begins].	
Subchapter 5. Registration of Air Contaminant Sources				
*	*	*	*	*	*	*
Subchapter 9. Excess Emission and Malfunction Reporting Requirements				
*	*	*	*	*	*	*
Subchapter 13. Open Burning				
252:100–13–1	Purpose	6/12/2000	12/29/2008 [Insert FR page number where document begins].	
252:100–13–2	Definitions	6/12/2000	12/29/2008 [Insert FR page number where document begins].	
252:100–13–5	Open burning prohibited	6/12/2000	12/29/2008 [Insert FR page number where document begins].	
252:100–13–7	Allowed open burning	6/12/2000	12/29/2008 [Insert FR page number where document begins].	
252:100–13–9	General conditions and requirements for allowed open burning.	6/12/2000	12/29/2008 [Insert FR page number where document begins].	
252:100–13–10	Disaster relief	6/12/2000	12/29/2008 [Insert FR page number where document begins].	
252:100–13–11	Responsibility for consequences of open burning.	6/12/2000	12/29/2008 [Insert FR page number where document begins].	
Subchapter 15. Motor Vehicle Pollution Control Devices				

EPA APPROVED OKLAHOMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Subchapter 17. Incinerators				
PART 1. GENERAL PROVISIONS				
252:100–17–1	Purpose	6/25/1998	12/29/2008 [Insert FR page number where document begins].	
252:100–17–1.1	Reference to 40 CFR	6/25/1998	12/29/2008 [Insert FR page number where document begins].	
252:100–17–1.2	Terminology related to 40 CFR	6/25/1998	12/29/2008 [Insert FR page number where document begins].	
PART 3. INCINERATORS				
252:100–17–2	Applicability	6/1/2001	12/29/2008 [Insert FR page number where document begins].	
252:100–17–2.1	Exemptions	6/25/1998	12/29/2008 [Insert FR page number where document begins].	
252:100–17–2.2	Definitions	6/25/1998	12/29/2008 [Insert FR page number where document begins].	
252:100–17–3	Opacity	6/25/1998	12/29/2008 [Insert FR page number where document begins].	
252:100–17–4	Particulate matter	6/25/1998	12/29/2008 [Insert FR page number where document begins].	
252:100–17–5	Incinerator design requirements	6/1/2001	12/29/2008 [Insert FR page number where document begins].	
252:100–17–5.1	Alternative incinerator design requirements.	6/1/2001	12/29/2008 [Insert FR page number where document begins].	
252:100–17–7	Test methods	6/25/1998	12/29/2008 [Insert FR page number where document begins].	
Subchapter 19. Control of Emission of Particulate Matter				
252:100–19–1	Purpose	6/1/2000	12/29/2008 [Insert FR page number where document begins].	
252:100–19–1.1	Definitions	6/1/2000	12/29/2008 [Insert FR page number where document begins].	
252:100–19–4	Allowable particulate matter emission rates from fuel-burning units.	6/1/2000	12/29/2008 [Insert FR page number where document begins].	
252:100–19–10	Allowable particulate matter emission rates from indirectly fired wood fuel-burning units.	6/1/2000	12/29/2008 [Insert FR page number where document begins].	
252:100–19–11	Allowable particulate matter emission rates from combined wood fuel and fossil fuel fired steam generating units.	6/1/2000	12/29/2008 [Insert FR page number where document begins].	
252:100–19–12	Allowable particulate matter emission rates from directly fired fuel-burning units and industrial processes.	6/1/2000	12/29/2008 [Insert FR page number where document begins].	
252:100–19–13	Permit by rule	6/1/2000	12/29/2008 [Insert FR page number where document begins].	

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State citation	Title/subject	State effective date	EPA approval date	Explanation
Subchapter 23. Control of Emissions from Cotton Gins				
252:100–23–1	Purpose	6/1/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–23–2	Definitions	6/1/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–23–3	Applicability, general requirements.	6/1/2000	12/29/2008 [Insert FR page number where document begins].	NOT in SIP: paragraph (b)(2).
252:100–23–4	Visible emissions (opacity) and particulates.	6/1/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–23–5	Emission control equipment	6/1/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–23–6	Fugitive dust controls	6/1/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–23–7	Permit by rule	6/1/1999	12/29/2008 [Insert FR page number where document begins].	
Subchapter 24. Particulate Matter Emissions from Grain, Feed or Seed Operations				
252:100–24–1	Purpose	6/1/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–24–2	Definitions	6/1/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–24–3	Applicability, general requirements.	6/1/2000	12/29/2008 [Insert FR page number where document begins].	NOT in SIP: paragraph (b)(2).
252:100–24–4	Visible emissions (opacity) limit	6/1/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–24–5	Certification	6/1/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–24–6	Fugitive dust controls	6/1/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–24–7	Permit by rule	6/1/1999	12/29/2008 [Insert FR page number where document begins].	
Subchapter 25. Visible Emissions and Particulates				
252:100–25–1	Purpose	6/1/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–25–2	General prohibition	6/1/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–25–2.1	Definitions	6/1/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–25–3	Opacity Limit	6/1/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–25–4	Alternative for particulates	6/1/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–25–5	Continuous emission monitoring for opacity.	6/1/1999	12/29/2008 [Insert FR page number where document begins].	

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State citation	Title/subject	State effective date	EPA approval date	Explanation
Subchapter 29. Control of Fugitive Dust				
252:100–29–I	Purpose	5/26/1994	11/3/1999, 64 FR 59629.	
252:100–29–2	General provisions	6/1/2001	12/29/2008 [Insert FR page number where document begins].	
252:100–29–3	Precautions required in maintenance or nonattainment areas.	6/1/2001	12/29/2008 [Insert FR page number where document begins].	
252:100–29–4	Exception for agricultural purposes.	5/26/1994	11/3/1999, 64 FR 59629.	
Subchapter 31. Control of Emission of Sulfur Compounds				
PART 1. GENERAL PROVISIONS				
252:100–31–1	Purpose	5/26/1994	11/3/1999, 64 FR 59629.	
252:100–31–2	Definitions	5/26/1994	11/3/1999, 64 FR 59629.	
252:100–31–3	Performance testing	5/26/1994	11/3/1999, 64 FR 59629.	
PART 3. EXISTING EQUIPMENT STANDARDS				
252:100–31–12	Sulfur oxides	5/26/1994	11/3/1999, 64 FR 59629.	
252:100–31–13	Sulfuric acid mist	5/26/1994	11/3/1999, 64 FR 59629.	
252:100–31–14	Hydrogen sulfide	5/26/1994	11/3/1999, 64 FR 59629.	
252:100–31–15	Total reduced sulfur	5/26/1994	11/3/1999, 64 FR 59629.	
PART 5. NEW EQUIPMENT STANDARDS				
252:100–31–25	Sulfur oxides	7/1/1995	12/29/2008 [Insert FR page number where document begins].	
252:100–31–26	Hydrogen sulfide	5/26/1994	11/3/1999, 64 FR 59629.	
Subchapter 33. Control of Emission of Nitrogen Oxides				
252:100–33–I	Purpose	5/26/1994	11/3/1999, 64 FR 59629.	
252:100–33–1.1	Definitions	6/1/2001	12/29/2008 [Insert FR page number where document begins].	
252:100–33–1.2	Applicability	6/1/2001	12/29/2008 [Insert FR page number where document begins].	
252:100–33–2	Emission limits	6/1/2001	12/29/2008 [Insert FR page number where document begins].	
Subchapter 35. Control of Emission of Carbon Monoxide				
252:100–35–1	Purpose	6/1/2000	12/29/2008 [Insert FR page number where document begins].	
252:100–35–1.1	Definitions	6/1/2000	12/29/2008 [Insert FR page number where document begins].	
252:100–35–2	Emission limits	6/1/2000	12/29/2008 [Insert FR page number where document begins].	
Subchapter 37. Control of Emission of Organic Materials				
PART 1. GENERAL PROVISIONS				
252:100–37–1	Purpose	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–37–2	Definitions	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–37–3	Applicability and compliance	6/11/1999	12/29/2008 [Insert FR page number where document begins].	

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State citation	Title/subject	State effective date	EPA approval date	Explanation
252:100–37–4	Exemptions	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–37–5	Operation and maintenance	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
	PART 3. CONTROL OF VOCs IN STORAGE AND LOADING OPERATIONS			
252:100–37–15	Storage of VOCs	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–37–16	Loading of VOCs	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
	PART 5. CONTROL OF VOCs IN COATING OPERATIONS			
252:100–37–25	Coating of parts and products	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–37–26	Clean up with VOCs	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
	PART 7. CONTROL OF SPECIFIC PROCESSES			
252:100–37–35	Waste gas disposal	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–37–36	Fuel-burning and refuse-burning equipment.	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–37–37	Effluent water separators	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–37–38	Pumps and compressors	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
	PART 9. PERMIT BY RULE FOR VOC STORAGE AND LEADING FACILITIES			
252:100–37–41	Applicability	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–37–42	Permit-by-rule requirements	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
	Subchapter 39. Emission of Organic Materials in Nonattainment Areas			
	PART 1. GENERAL PROVISIONS			
252:100–39–1	Purpose	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–39–2	Definitions	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–39–3	General applicability	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–39–4	Exemptions	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
	PART 3. PETROLEUM REFINERY OPERATIONS			
252:100–39–15	Petroleum refinery equipment leaks.	6/11/1999	12/29/2008 [Insert FR page number where document begins].	

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State citation	Title/subject	State effective date	EPA approval date	Explanation
252:100–39–16	Petroleum refinery process unit turnaround.	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–39–17	Petroleum refinery vacuum producing system.	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–39–18	Petroleum refinery effluent water separators.	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
	PART 5. PETROLEUM PROCESSING AND STORAGE			
252:100–39–30	Petroleum liquid storage in vessels with external floating roofs.	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
	PART 7. SPECIFIC OPERATIONS			
252:100–39–40	Cutback asphalt (paving)	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–39–41	Storage, loading and transport/delivery of VOCs.	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–39–42	Metal cleaning	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–39–43	Graphic arts systems	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–39–44	Manufacture of pneumatic rubber tires.	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–39–45	Petroleum (solvent) dry cleaning	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–39–46	Coating of parts and products ...	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–39–47	Control of VOC emissions from aerospace industries coatings operations.	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
252:100–39–49	Manufacturing of fiberglass reinforced plastic products.	6/11/1999	12/29/2008 [Insert FR page number where document begins].	
	Subchapter 43. Sampling and Testing Methods			
*	* * * * *	*	*	
	Subchapter 45. Monitoring of Emissions			
252:100–45–1	Purpose	5/26/1994	11/3/1999, 64 FR 59629.	
252:100–45–2	Monitoring equipment required ..	5/26/1994	11/3/1999, 64 FR 59629.	
252:100–45–3	Records required	5/26/1994	11/3/1999, 64 FR 59629.	
252:100–45–4	Compliance certifications	7/1/1995	12/29/2008 [Insert FR page number where document begins].	
252:100–45–5	Enforceability	7/1/1995	12/29/2008 [Insert FR page number where document begins].	
	Appendices for OAC 252: Chapter 100			
252:100, Appendix A	Allowable Emissions for Incinerators with Capacities of 100/lbs/hr or Greater.	6/25/1998	12/29/2008 [Insert FR page number where document begins].	
252:100, Appendix B	Allowable Emissions for Incinerators with Capacities less than 100 lbs/hr.	6/25/1998	12/29/2008 [Insert FR page number where document begins].	

EPA APPROVED OKLAHOMA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
252:100, Appendix C	Allowable Rate of Emissions for Indirectly Fired Fuel-Burning Units.	6/1/2001	12/29/2008 [Insert FR page number where document begins].	
252:100, Appendix D	Allowable Rate of Emissions for Indirectly Fired Wood Fuel-Burning Units.	6/1/2000	12/29/2008 [Insert FR page number where document begins].	
252:100, Appendix E	Primary Ambient Air Quality Standards.	6/1/1999	12/29/2008 [Insert FR page number where document begins].	
252:100, Appendix F	Secondary Ambient Air Quality Standards.	6/1/1999	12/29/2008 [Insert FR page number where document begins].	
252:100, Appendix G	Allowable Rate of Emissions	5/26/1994	11/30/1999, 64 FR 59629.	
252:100, Appendix L	PM–10 Emission Factors for Permit by Rule for Grain Elevators.	6/1/1999	12/29/2008 [Insert FR page number where document begins].	
OKLAHOMA ADMINISTRATIVE CODE, TITLE 595. DEPARTMENT OF PUBLIC SAFETY, CHAPTER 20 (OAC 595:20). INSPECTION AND EQUIPMENT FOR MOTOR VEHICLES				
*	*	*	*	*	*	*

[FR Doc. E8–29979 Filed 12–24–08; 8:45 am]
BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 73, No. 249
Monday, December 29, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 440

[Docket No. EEWAP1201]

RIN 1904–AB84

Weatherization Assistance Program for Low-Income Persons

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) is proposing to expand the definition of ''State'' under the Weatherization Assistance Program for Low-Income Persons (Weatherization Assistance Program) and to amend the financial assistance allocation procedure to reflect the expanded definition. The Energy Independence and Security Act of 2007 amended the Weatherization Assistance Program definition of ''State'' to include the Commonwealth of Puerto Rico and the other territories and possessions of the United States. Consistent with the statutory amendment, DOE is proposing to amend the regulatory definition of ''State,'' and to amend the allocation procedure relied on to calculate the amount of financial assistance received by each State so as to include American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, and the Virgin Islands.

DATES: Public comments on this proposed rule and the proposed information collection request will be accepted until February 27, 2009. DOE will hold a public meeting on Tuesday, January 27, 2009, from 9 a.m. to 12 p.m., in Conference Room 5E–081, at 1000 Independence Avenue, SW., Washington, DC. DOE must receive requests to speak at the public meeting before 4 p.m., Monday, January 26, 2009. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., Thursday, January 22, 2009.

ADDRESSES: You may submit comments identified by the RIN number specified in the heading of this notice of proposed rulemaking (NOPR), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: jean.diggs@ee.doe.gov.* Include the RIN number in the subject line of the message.
- *Postal Mail:* Jean Diggs, U.S. Department of Energy, Weatherization Assistance Program, Mailstop EE–2K, 1000 Independence Avenue, SW., Washington, DC 20585–0121, Telephone: (202) 586–8506.
- *Hand Delivery/Courier:* Jean Diggs, U.S. Department of Energy, Weatherization Assistance Program, Room 6070, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Instructions: All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Jean Diggs, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Weatherization Assistance Program, EE–2K, Room 6070, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8506, e-mail: *jean.diggs@ee.doe.gov,* or Chris Calamita, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507, e-mail: *Christopher.Calamita@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Sections 411–418 of the Energy Conservation and Production Act established the Weatherization Assistance Program for Low-Income Persons (Weatherization Program). (42 U.S.C. 6861 *et seq.*) The Weatherization Program reduces energy costs for low-income households by increasing the energy efficiency of their homes, while promoting their health and safety. The Weatherization Program provides energy-efficiency services to more than 100,000 homes every year. These services reduce average annual energy costs by $413 per household.

Under the Weatherization Program, services are prioritized to the elderly, people with disabilities, and families with children. These low-income households are often on fixed incomes or rely on income assistance programs and are most vulnerable to volatile changes in energy markets. High energy users or households with a high energy burden may also receive priority.

DOE works in partnership with State- and local-level agencies to implement the Weatherization Program. DOE's Project Management Center awards grants to State-level agencies, which then contract with local agencies. Weatherization programs operate in all 50 States, the District of Columbia, and among Native American tribes. Approximately 900 local agencies deliver weatherization services to eligible residents in every county in the nation. Since the inception of the Program in 1976, over 5.7 million households have received weatherization services. The Weatherization Program returns $1.65 in energy-related benefits for every $1 invested.

II. Definition of ''State''

DOE allocates financial assistance for weatherization to States and Indian tribes. (10 CFR 440.10 and 440.11) Under the current regulatory definition ''State'' is defined as ''each of the States and the District of Columbia.'' 10 CFR 440.3 section 411(c) of the Energy Independence and Security Act of 2007 amended section 412 of the Energy Conservation and Production Act to include under the definition of ''State,'' the Commonwealth of Puerto Rico, and any other territory or possession of the United States. (42 U.S.C. 6862(8)) DOE is proposing to amend the regulatory definition of ''State'' under the Weatherization Program consistent with the statutory definition. The proposed definition of ''State'' would include American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, and the Virgin Islands (hereafter

collectively referred to as the U.S. territories).

The amended statutory definition of ''State'' includes territories or possessions of the United States generally, which would indicate that the territories of Palmyra Atoll and Wake Atoll would also be included. However, the territories of Palmyra Atoll and Wake Atoll do not have significant permanent populations to warrant inclusion in the Weatherization Program. Palmyra Atoll is a national Wildlife Refuge and access to Wake Atoll is restricted. (See, *http://www.doi.gov/oia/Firstpginfo/islandfactsheet.htm,* last visited September 30, 2008.) The purpose of the Weatherization Program is to provide grants ''for the purpose of providing financial assistance with regard to projects designed to provide for the weatherization of dwelling units, particularly those where elderly or handicapped low-income persons reside, occupied by low-income families.'' (42 U.S.C.6863(a)) Further DOE must ''allocate financial assistance to each State on the basis of the relative need for weatherization assistance among low-income persons throughout the states.'' (42 U.S.C. 6864) The absence of permanent populations on Palmyra Atoll and Wake Atoll would make the inclusion of these Atolls superfluous. As such DOE is not proposing to include the territories of Palmyra Atoll and Wake Atoll in the regulatory definition of State for the purpose of the Weatherization Assistance Program.

III. Allocation of Funds

Each year Congress appropriates funds to implement the Weatherization Assistance Program. A portion of the appropriated funds is used for training and technical assistance. The remaining funds, comprising the majority of the appropriated funds, are distributed to the States as program funds based on a two-part allocation.

From the total appropriation, DOE reserves funds for national training and technical assistance (T&TA) activities that benefit all States. In addition, DOE specifically allocates funding to States for T&TA activities at both the State and local levels. The total funds for national, State, and local T&TA cannot exceed 10 percent of the Congressional appropriation (42 U.S.C. 6865(a)(1)). The remaining funds comprise the State program allocations.

If the State program allocations in a fiscal year (FY) are at or above the amount allocated to States in FY 1994 under Public Law 103–332 (September 30, 1994), (*i.e.*, the funds made available to the Weatherization Assistance Program minus funds for T&TA, which equaled $209,724,761) the State program allocations are distributed according to a two-part allocation procedure. Should total funds for State program allocation fall below $209,724,761, the allocations to States are reduced proportionally. See 10 CFR 440.10(c).

The two-part allocation is comprised of a base allocation plus a formula allocation. See 10 CFR 440.10(b). The base allocation for each State is fixed, but differs for each State and was derived from each State's allocation under the appropriations for FY 1993.[1] The base allocation was developed to minimize fluctuations in funds received by States between fiscal years resulting from changes in the total amount of appropriated funds received for the Weatherization Assistance Program. The base allocation was established in response to concern that substantial fluctuation between annual funds could disrupt a State's program. The current sum of the base allocations for all States totals $171,858,000. See 10 CFR 440.10(b)(1).

Under the two-part allocation, funds in excess of the total base allocation are allocated among States according to the formula allocation set forth in 10 CFR 440.10(b)(3). A State's formula allocation is based on three factors for each State. Factor 1, Low-Income Population, represents the share of the nation's low-income households in each State expressed as a percentage of all U.S. low-income households. Factor 2, Climatic Conditions, is obtained from the heating and cooling degrees for each State, treating the energy needed for heating and cooling proportionately. Factor 3, Residential Energy Expenditures by Low-Income Households in each State, is an approximation of the financial burden that energy use places on low-income households. The approximation is necessary because State-specific data on residential energy expenditures by low-income households is generally lacking.

The Department is proposing to revise how funds are allocated under the Weatherization Assistance Program so as to include the U.S. territories. The Department is proposing revisions based on a method for determining the base and formula allocation for the U.S. territories that is consistent with how the current allocation method for States was developed. As indicated above, the current process was based on the allocation in FY 1994. A complete discussion of the development of the current allocation method is provided at 60 FR 4480.

Essentially, the Department is following the development process used in 1995 to establish the existing allocation method (*i.e.*, basing the allocation formula on FY 1994 allocation) under the assumption that at that time the U.S. territories were included in the Weatherization Assistance Program. DOE recognizes that the data used to calculate a State's share of the funds under the 1995 rulemaking are not available for the U.S. territories. Therefore, DOE is proposing to use Hawaii's information for the U.S. territories. Similar to Hawaii, the U.S. territories are in hot climates with virtually no heating load, are all islands, and share a common main fuel type used in low-income households, electricity.

A. Allocation Threshold

As discussed in the previous paragraphs, the allocation of funding under the Weatherization Assistance Program is dependent first upon whether the total funds available for allocation to the States are at or above the level made available under Public Law 103–322, *i.e.*, $209,724,761. In order to make the regulations clearer, the Department is proposing to replace the references in 10 CFR part 440 to the ''total program allocations under Public Law No. 103–322'' with the actual dollar value. This proposal would not impact the allocation process, and is intended solely for the purpose of making the current regulation easier to read and understand.

B. Amending the Base Allocation

To reflect the addition of the territories of the United States to the Weatherization Assistance Program, DOE is proposing to revise the base allocation to include the newly added jurisdictions. DOE is proposing to recalculate the base allocation using the amount of funding in the FY 1993 appropriations with the assumption that the U.S. territories had weatherization programs at that time. As discussed previously, DOE is proposing to rely on Hawaii's base allocation ($120,000) as the base allocation for the U.S. territories. The proposed revision would not reduce the base allocation amount for any State, but instead would increase the total base allocation value so as to include the U.S. territories.

Under this approach, the revised base allocation in 10 CFR 440.10(b) would be as follows:

[1] Calculation of each State's share of the funds was based on a formula different from that in the current regulations. See, 60 FR 4480, 4482; January 23, 1995.

State	Base allocation
Alabama	$1,636,000
Alaska	1,425,000
Arizona	760,000
Arkansas	1,417,000
California	4,404,000
Colorado	4,574,000
Connecticut	1,887,000
Delaware	409,000
District of Columbia	487,000
Florida	761,000
Georgia	1,844,000
Hawaii	120,000
Idaho	1,618,000
Illinois	10,717,000
Indiana	5,156,000
Iowa	4,032,000
Kansas	1,925,000
Kentucky	3,615,000
Louisiana	912,000
Maine	2,493,000
Maryland	1,963,000
Massachusetts	5,111,000
Michigan	12,346,000
Minnesota	8,342,000
Mississippi	1,094,000
Missouri	4,615,000
Montana	2,123,000
Nebraska	2,013,000
Nevada	586,000
New Hampshire	1,193,000
New Jersey	3,775,000
New Mexico	1,519,000
New York	15,302,000
North Carolina	2,853,000
North Dakota	2,105,000
Ohio	10,665,000
Oklahoma	1,846,000
Oregon	2,320,000
Pennsylvania	11,457,000
Rhode Island	878,000
South Carolina	1,130,000
South Dakota	1,561,000
Tennessee	3,218,000
Texas	2,999,000
Utah	1,692,000
Vermont	1,014,000
Virginia	2,970,000
Washington	3,775,000
West Virginia	2,573,000
Wisconsin	7,061,000
Wyoming	67,000
American Samoa	120,000
Guam	120,000
Puerto Rico	120,000
Northern Mariana Islands	120,000
Virgin Islands	120,000
Total	171,858,000

DOE requests comment on the appropriateness of this approach. If a commenter suggests that funds not be allotted to the U.S. territories under the base allocation, DOE specifically requests reasons for this position.

C. Formula Allocation

In addition to a base allocation, DOE is proposing to allocate weatherization funds to the U.S. territories through the formula allocation. Essentially, the weatherization funds would be based on the U.S. territories' (1) number of low-income households (10 CFR 440.10(b)(3)(i)), (2) number of ''heating degree'' and ''cooling degree'' days (10 CFR 440.10(b)(3)(ii) and (iii)), and (3) average residential household energy expenditures (10 CFR 440.10(b)(3)(v)). DOE recognizes that data for the third factor of the formula allocation, *i.e.*, average residential household energy expenditures, are not available for the U.S. territories. In the absence of this data, DOE is proposing to again rely on comparable data from a comparable State, *i.e.*, Hawaii. This approach would not require revisions to the regulatory text for the formula allocation.

DOE requests comment on the proposed approach taken in applying the formula allocation to the U.S. territories.

D. Practical Implications of the Proposed Revisions

To demonstrate the implications of today's proposed rule, the following table provides the allocation of funding to the States in FY 2008 under the current regulations, and for comparison, provides the allocation of funding in FY 2008 were today's proposal in effect.

TABLE 1—ESTIMATED STATE ALLOCATIONS UNDER PROPOSED APPROACH

State	FY 2008 total allocation ($)	FY 2008 total allocation (under proposed approach) ($)
Alabama	2,396,413	2,369,282
Alaska	1,672,643	1,667,526
Arizona	1,352,772	1,328,435
Arkansas	2,061,017	2,039,278
California	6,265,676	6,205,804
Colorado	5,454,329	5,431,980
Connecticut	2,495,304	2,479,459
Delaware	572,412	568,910
District of Columbia	646,384	643,058
Florida	1,948,403	1,880,791
Georgia	2,914,609	2,875,908
Hawaii	203,581	201,446
Idaho	1,964,431	1,956,311
Illinois	13,784,473	13,695,484
Indiana	6,520,687	6,481,878
Iowa	4,966,077	4,940,585
Kansas	2,518,837	2,501,273
Kentucky	4,498,867	4,472,826
Louisiana	1,723,424	1,687,948
Maine	3,053,961	3,040,267
Maryland	2,640,259	2,620,848
Massachusetts	6,517,890	6,480,033
Michigan	15,118,849	15,042,578
Minnesota	9,809,089	9,770,586
Mississippi	1,640,948	1,620,925
Missouri	5,975,410	5,934,156
Montana	2,507,786	2,498,874
Nebraska	2,482,462	2,470,109
Nevada	831,718	825,116
New Hampshire	1,501,762	1,494,753
New Jersey	5,078,993	5,041,792
New Mexico	1,900,941	1,890,993
New York	20,075,816	19,939,418
North Carolina	4,139,225	4,096,592
North Dakota	2,485,405	2,476,499
Ohio	13,676,435	13,590,214
Oklahoma	2,579,529	2,554,620
Oregon	2,808,354	2,796,527
Pennsylvania	14,638,184	14,547,920
Rhode Island	1,150,982	1,144,728
South Carolina	1,767,384	1,744,810
South Dakota	1,907,964	1,899,574
Tennessee	4,162,066	4,132,707
Texas	5,549,413	5,435,085
Utah	2,067,579	2,058,365
Vermont	1,272,118	1,266,503
Virginia	3,997,991	3,967,181
Washington	4,519,063	4,500,475
West Virginia	3,196,901	3,180,129
Wisconsin	8,528,669	8,489,599
Wyoming	1,169,217	1,165,147
American Samoa	0	182,775
Guam	0	188,072
Puerto Rico	0	820,775
Northern Mariana Islands	0	183,777
Virgin Islands	0	191,998
Headquarters T&TA	4,508,595	4,508,595
Total	227,221,297	227,221,297
Navajo Grant:	321,735	318,447
Inter-Tribal Council of America Grant:	88,741	87,145
Northern Arapahoe Grant:	99,863	99,516
Arizona (adjusted)	1,128,755	1,108,447

TABLE 1—ESTIMATED STATE ALLOCATIONS UNDER PROPOSED APPROACH—Continued

State	FY 2008 total allocation ($)	FY 2008 total allocation (under proposed approach) ($)
New Mexico (adjusted)	1,714,483	1,705,389
Wyoming (adjusted)	1,069,354	1,065,631

IV. Effective Date

DOE is proposing that the amended allocation procedure for the Weatherization Assistance Program will be in effect for the 2009 program year.

V. Regulatory Analysis

A. Review Under Executive Order 12866

Today's notice of public rulemaking is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735; October 4, 1993). Accordingly, today's action was not subject to review by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' (67 FR 53461; August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

DOE has reviewed today's proposed rule for the Weatherization Assistance Program under the provisions of the Regulatory Flexibility Act. Today's proposed rule would incorporate statutory changes made to the Weatherization Assistance Program. The proposed amendments include the U.S. territories in the Weatherization Assistance Program to the same extent as States are currently included. This rule, if promulgated as a final rule, would directly affect States and individual recipients of assistance. It would not have an economic impact on small entities. On this basis, DOE certifies that if the proposed rule were finalized that it would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking.

C. Review Under the Paperwork Reduction Act of 1995

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Department has submitted a proposed revision of the currently approved collection of information request (ICR) to the Office of Management and Budget (OMB): Weatherization Assistance Program, OMB Control No. 1910–517. If made final, today's proposed rule would add a total of 5 additional respondents (American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, and the Virgin Islands). (1) OMB No. 1910–5127; (2) Information Collection Request Title: Weatherization Assistance Program; (3) Purpose: The Weatherization Assistance Program provides grants to States, the District of Columbia and Native American Tribes annually; (4) Estimated Number of Respondents: 57 (Fifty Seven) States and territories; (5) Estimated Total Burden Hours: 3 hours per respondent; (6) Number of Collections: The information collection request contains 3 information and/or recordkeeping requirements.

Comments on the revision of the collection of information may be sent to OMB addressed to: Department of Energy Desk Officer, Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503. Persons submitting comments to OMB also are requested to send a copy to the DOE contact person at the address given in the **ADDRESSES** section of this notice. OMB is particularly interested in comments on: (1) The necessity of the proposed collection of information; (2) the accuracy of DOE's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be maintained; and (4) ways to minimize the burden on the requirements of the respondents.

D. Review Under the National Environmental Policy Act of 1969

DOE has tentatively determined that this proposed rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.6. of Appendix A to subpart D, 10 CFR part 1021. That Categorical Exclusion applies to rulemakings that are strictly procedural, such as rulemaking establishing the administration of grants. The proposed rule in today's document would establish the procedure for allocating funds under the Weatherization Assistance Program so as to cover, in addition to the States and the District of Columbia, the U.S. territories. The proposed regulations would not have any independent environmental impact. Accordingly, DOE has not prepared an environmental assessment or an environmental impact statement.

E. Review Under Executive Order 13132, ''Federalism''

Executive Order 13132, 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that pre-empt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not pre-empt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of

new regulations, section 3(a) of Executive Order 12988, Civil Justice Reform, 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. The review required by sections 3(a) and 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them.

DOE has completed the required review and determined that, to the extent permitted by law, if finalized, this proposed rule would meet the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Subsection 101(5) of Title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of $100 million or more. Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments.

If made final, this proposed rule would not impose a Federal mandate on State, local or tribal governments, and it will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

H. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This notice of proposed rulemaking would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under the Treasury and General Government Appropriations Act of 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice of proposed rulemaking under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA) as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use, should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under Executive Order 13175

Executive Order 13175. ''Consultation and Coordination with Indian tribal Governments'' (65 FR 67249; November 9, 2000), requires DOE to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' refers to regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' Today's proposed regulatory action is not a policy that has ''tribal implications'' under Executive Order 13175.

Under the Weatherization Assistance Program, a tribal organization may qualify as a unit of general purpose local government and, therefore, be eligible to apply for funds. See 10 CFR 440.11. Today's regulatory action would not change the eligibility of Indian tribes to apply for or receive funds under the Weatherization Assistance Program. If made final, today's regulatory action would include Puerto Rico and the U.S. territories in the allocation of available funds. DOE has reviewed today's notice of proposed rulemaking under executive Order 13175 and has determined that it is consistent with applicable policies of that Executive Order.

VI. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date.

The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's notice of proposed rulemaking.

List of Subjects in 10 CFR Part 440

Administrative practice and procedure, Energy conservation, Grant programs—energy, Grant programs—housing and community development, Housing standards, Indians, Individuals with disabilities, Reporting and record keeping requirements, Weatherization.

Issued in Washington, DC, on December 11, 2008.

David E. Rodgers,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend part 440 of chapter II of title 10, Code of Federal regulations to read as follows:

PART 440—WEATHERIZATION ASSISTANCE PROGRAM FOR LOW-INCOME PERSONS

1. The authority citation for Part 440 continues to read as follows:

Authority: 42 U.S.C. 6861 *et seq.*; 42 U.S.C. 7101 *et. seq.*

2. Section 440.3 is amended by revising the definition of ''State'' to read as follows:

§ 440.3 Definitions.

* * * * *

State means each of the States, the District of Columbia, American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, and the Virgin Islands.

* * * * *

3. Section 440.10 is amended by revising introductory paragraph (b), (b)(1) Table 1, and paragraph (c), to read as follows:

§ 440.10 Allocation of funds.

* * * * *

(b) Based on the total program allocations at or above the amount of $209,724,761, DOE shall determine the program allocation for each State from available funds as follows:

(1) * * *

State	Base allocation ($)
Alabama	1,636,000
Alaska	1,425,000
Arizona	760,000
Arkansas	1,417,000
California	4,404,000
Colorado	4,574,000
Connecticut	1,887,000
Delaware	409,000
District of Columbia	487,000
Florida	761,000
Georgia	1,844,000
Hawaii	120,000
Idaho	1,618,000
Illinois	10,717,000
Indiana	5,156,000
Iowa	4,032,000
Kansas	1,925,000
Kentucky	3,615,000
Louisiana	912,000
Maine	2,493,000
Maryland	1,963,000
Massachusetts	5,111,000
Michigan	12,346,000
Minnesota	8,342,000
Mississippi	1,094,000
Missouri	4,615,000
Montana	2,123,000
Nebraska	2,013,000
Nevada	586,000
New Hampshire	1,193,000
New Jersey	3,775,000
New Mexico	1,519,000
New York	15,302,000
North Carolina	2,853,000
North Dakota	2,105,000
Ohio	10,665,000
Oklahoma	1,846,000
Oregon	2,320,000
Pennsylvania	11,457,000
Rhode Island	878,000
South Carolina	1,130,000
South Dakota	1,561,000
Tennessee	3,218,000
Texas	2,999,000
Utah	1,692,000
Vermont	1,014,000
Virginia	2,970,000
Washington	3,775,000
West Virginia	2,573,000
Wisconsin	7,061,000
Wyoming	967,000
American Samoa	120,000
Guam	120,000
Puerto Rico	120,000
Northern Mariana Islands	120,000
Virgin Islands	120,000
Total	171,858,000

* * * * *

(c) Should total program allocations for any fiscal year fall below $209,724,761, then each State's program allocation shall be reduced from its allocated amount under a total program allocation of $209,724,761 by the same percentage as total program allocations for the fiscal year fall below $209,724,761.

* * * * *

[FR Doc. E8–30836 Filed 12–24–08; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM05–35–000]

Standard of Review for Modifications to Jurisdictional Agreements

Issued December 18, 2008.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Withdrawal of notice of proposed rulemaking and termination of rulemaking proceeding.

SUMMARY: The Commission withdraws a notice of proposed rulemaking, which proposed that, in the absence of specific contractual language enabling Commission review of proposed contractual modifications not agreed to by the signatories (or their successors) under a ''just and reasonable'' standard, the Commission would review such modifications under a ''public interest'' standard.

DATES: *Effective Date:* This withdrawal published at 71 FR 303, January 4, 2006, will become effective January 28, 2009.

FOR FURTHER INFORMATION CONTACT: Hadas Kozlowski (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8030.

SUPPLEMENTARY INFORMATION:

125 FERC ¶ 61,310.

United States of America, Federal Energy Regulatory Commission.

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

Standard of Review for Modifications to Jurisdictional Agreements; Withdrawal of Notice of Proposed Rulemaking and Termination of Rulemaking Proceeding.

Docket No. RM05–35–000

(Issued December 18, 2008.)

1. On December 27, 2005, the Commission issued a Notice of Proposed Rulemaking (NOPR) in this proceeding.[1] For the reasons set forth below, we are exercising our discretion to withdraw the NOPR and terminate this rulemaking proceeding.

I. Background

2. In the NOPR, the Commission proposed to repeal its regulation at 18 CFR 35.1(d) and, in its place,

[1] *Standard of Review for Modifications to Jurisdictional Agreements, Notice of Proposed Rulemaking,* 71 FR 303 (Jan. 4, 2006), FERC Stats. & Regs. ¶ 32,596 (2005) (NOPR).

promulgate a general rule regarding the standard of review that must be met to justify proposed modifications to Commission-jurisdictional agreements under the Federal Power Act (FPA) and Natural Gas Act (NGA) that are not agreed to by the signatories (or their successors). The Commission noted that courts were divided as to whether, in the face of contractual silence, the Commission was required to apply the ''public interest'' standard of review or the ''just and reasonable'' standard of review to proposed modifications.[2] The NOPR thus focused on the standard of review applicable to proposed changes in contracts in the absence of contractual language specifying the standard of review preferred by the parties. The NOPR did not address other issues such as the showing needed to satisfy the ''*Mobile-Sierra* presumption.'' [3]

3. The Commission, in the NOPR, proposed a regulation which provided that, in the absence of prescribed contractual language enabling the Commission to review proposed modifications to agreements that are not agreed to by the signatories (or their successors) under a ''just and reasonable'' standard of review, the Commission will review such proposed modifications under a ''public interest'' standard of review. The Commission concluded that the weight of court precedent supported application of the ''public interest'' standard when evaluating proposed changes to such contracts, unless the contract language expressly invokes the ''just and reasonable'' standard. The Commission stated that this standard would promote contract certainty. Additionally, the Commission recognized the importance of providing certainty and stability in competitive electric energy markets.

II. Discussion

4. There is no longer a need for a rulemaking regarding the default standard of review, as the Supreme Court has addressed the law in this area. Since issuance of the NOPR, the United States Supreme Court has addressed the *Mobile-Sierra* doctrine in *Morgan Stanley.* The Court held that the *Mobile-Sierra* doctrine is a presumption that rates initially set in a freely negotiated contract meet the statutory just and reasonable requirement of the FPA.[4] The Court explained that ''parties could contract out of the *Mobile-Sierra* presumption by specifying in their contracts that a new rate filed with the Commission would supersede the contract rate,'' but otherwise ''the *Mobile-Sierra* presumption remains the default rule.'' [5]

5. Because the Supreme Court in *Morgan Stanley* has since addressed the default standard, the Commission concludes that it is no longer necessary to adopt the regulation proposed in the NOPR. The Commission therefore withdraws the NOPR and terminates this rulemaking proceeding.

The Commission orders:

The Notice of Proposed Rulemaking is hereby withdrawn and Docket No. RM05–35–000 is hereby terminated.

By the Commission. Commissioners Kelly and Wellinghoff concurring with a separate joint statement attached.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

United States of America, Federal Energy Regulatory Commission.

Standard of Review for Modifications to Jurisdictional Agreements

Docket No. RM05–35–000

(Issued December 18, 2008.)

Kelly and Wellinghoff, Commissioners, *concurring:*

This order terminates the rulemaking proceeding on the standard of review for modifications to jurisdictional agreements, withdrawing the Notice of Proposed Rulemaking (NOPR) that the Commission issued in 2005. This order states that, since the issuance of the NOPR, the United States Supreme Court addressed the *Mobile-Sierra* doctrine, including the default standard of review, in *Morgan Stanley*.[6] As a result, the majority finds that there is no longer a need for a rulemaking regarding the default standard of review.

We agree that the rulemaking proceeding on the standard of review for modifications to jurisdictional agreements should be terminated. However, we believe that in reaching that conclusion, it is appropriate to recognize not only the *Morgan Stanley* decision, but also the U.S. Court of Appeals for the District of Columbia Circuit's recent decision in *Maine Public Utilities Commission* v. *FERC.*[7] Because the Commission is bound by the rulings in *Morgan Stanley* and *Maine PUC,* we conclude that there is no longer a need for a rulemaking regarding the default standard of review.

For this reason, we concur with this order.

Suedeen G. Kelly,
Commissioner.
Jon Wellinghoff,
Commissioner.

[FR Doc. E8–30622 Filed 12–24–08; 8:45 am]

BILLING CODE 6717–01–P

[2] NOPR, FERC Stats. & Regs. ¶ 32,596 at P 8 (citing *Boston Edison Co.* v. *FERC,* 233 F.3d 60 (1st Cir. 2000)). The *Boston Edison* court stated that these issues would remain in a state of confusion until the Commission ''squarely confronted the underlying issues.'' *Boston Edison,* 233 F.3d at 68.

[3] *Morgan Stanley Capital Group, Inc.* v. *Public Utility District No. 1 of Snohomish County,* 128 S. Ct. 2733, 2739 (2008) (*Morgan Stanley*) (referring to *United Gas Pipe Line Co.* v. *Mobile Gas Serv. Corp.,* 350 U.S. 332 (1956); *FPC* v. *Sierra Pacific Power Co.,* 350 U.S. 348 (1956) (*Mobile-Sierra*)).

[4] *Id.* at 2737; *accord id.* at 2746.

[5] *Id.* at 2739; *cf. Public Util. Dist. No. 1* v. *FERC,* 471 F.3d 1053, 1075 (9th Cir. 2006),*aff'd and remanded sub nom., Morgan Stanley Capital Group, Inc.* v. *Public Utility District No. 1 of Snohomish County,* 128 S. Ct. 2733 (2008).

[6] *Morgan Stanley Capital Group, Inc.* v. *Public Utility District No. 1 of Snohomish County,* 128 S. Ct. 2733 (2008) (*Morgan Stanley*).

[7] *Maine Public Utilities Commission* v. *FERC,* 520 F.3d 464, *petition for reh'g denied,* No. 06–1403, slip op. (D.C. Cir. Oct. 6, 2008) (*Maine PUC*) (discussing, among other issues, the circumstances in which it is appropriate to apply the *Mobile-Sierra* presumption).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–150066–08]

RIN 1545–BI45

Guidance Regarding Foreign Base Company Sales Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS and Treasury Department are issuing temporary regulations relating to foreign base company sales income, in cases in which personal property sold by a controlled foreign corporation (CFC) is manufactured, produced, or constructed pursuant to a contract manufacturing arrangement or by one or more branches of the CFC. The temporary regulations modify the foreign base company sales income regulations to address current business structures and practices, particularly the growing importance of contract manufacturing and other manufacturing arrangements. The temporary regulations, in general, will affect CFCs and their United States shareholders. The text of the temporary regulations also serves as the text of the proposed regulations. This document also provides notice of a public hearing.

DATES: Written or electronic comments must be received by March 30, 2009. Outlines of the topics to be discussed at

the public hearing scheduled for April 20, 2009, at 10 a.m. must be received by April 2, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–150066–08), room 5203 Internal Revenue Service, PO Box 7604 Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–150066–08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Alternatively, taxpayers may submit electronic comments via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–150066–08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Ethan Atticks, (202) 622–3840; concerning submissions of comments, hearing, and/or to be placed on the building access list to attend the hearing, Richard A. Hurst at *Richard.a.hurst@irscounsel.treas.gov* or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provision

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to foreign base company sales income, in cases in which personal property sold by a controlled foreign corporation (CFC) is manufactured, produced, or constructed pursuant to a contract manufacturing arrangement or by one or more branches of the CFC. These regulations, in general, will affect CFCs and their United States shareholders. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains these proposed regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be give to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 20, 2009, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the Constitution Avenue entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments or electronic comments by March 30, 2009, and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 2, 2009. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Ethan Atticks of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 1.954–3 is amended by revising paragraphs (b)(1)(i)(*c*), (b)(1)(ii)(*a*), (b)(1)(ii)(*c*), (b)(2)(i)(*b*), (b)(2)(i)(*d*), (b)(2)(ii)(*a*), (b)(2)(ii)(*b*), (b)(2)(ii)(*e*), (b)(4) Example (3), (c), and (d), and adding *Examples 8* and *9* to paragraph (b)(4), and adding paragraphs (e), (f) and (g) to read as follows:

§ 1.954–3 Foreign base company sales income.

* * * * *

(b) * * * (1) * * * (i) * * *

(*c*) [The text of the proposed amendments to § 1.954–3(b)(1)(i)(*c*) is the same as the text of § 1.954–3T(b)(1)(i)(*c*) published elsewhere in this issue of the **Federal Register**].

(ii) * * * (*a*) [The text of the proposed amendments to § 1.954–3(b)(1)(ii)(a) is the same as the text of § 1.954–3T(b)(1)(ii)(a) published elsewhere in this issue of the **Federal Register**].

* * * * *

(*c*) [The text of the proposed amendments to § 1.954–3(b)(1)(ii)(c) is the same as the text of § 1.954–3T(b)(1)(ii)(c) published elsewhere in this issue of the **Federal Register**].

(2) * * * (i) * * *

(*b*) [The text of the proposed amendments to § 1.954–3(b)(2)(i)(b) is the same as the text of § 1.954–3T(b)(2)(i)(b) published elsewhere in this issue of the **Federal Register**].

* * * * *

(*d*) [The text of the proposed amendments to § 1.954–3(b)(2)(i)(d) is the same as the text of § 1.954–3T(b)(2)(i)(d) published elsewhere in this issue of the **Federal Register**].

* * * * *

(ii) * * *

(*a*) [The text of the proposed amendments to § 1.954–3(b)(2)(ii)(a) is the same as the text of § 1.954–3T(b)(2)(ii)(a) published elsewhere in this issue of the **Federal Register**].

(*b*) [The text of the proposed amendments to § 1.954–3(b)(2)(ii)(b) is the same as the text of § 1.954–3T(b)(2)(ii)(b) published elsewhere in this issue of the **Federal Register**].

* * * * *

(*e*) [The text of the proposed amendments to § 1.954–3(b)(2)(ii)(e) is the same as the text of § 1.954–3T(b)(2)(ii)(e) published elsewhere in this issue of the **Federal Register**].

* * * * *

(4) * * *

Example (3). [The text of the proposed amendments to § 1.954–3(b)(4) *Example 3* is the same as the text of § 1.954–3T(b)(4) *Example 3* published elsewhere in this issue of the **Federal Register**].

* * * * *

Example 8. [The text of the proposed amendments to § 1.954–3(b)(4) *Example 8* is the same as the text of § 1.954–3T *Example 8* published elsewhere in this issue of the **Federal Register**].

Example 9. [The text of the proposed amendments to § 1.954–3(b)(4) *Example 9* is the same as the text of § 1.954–3T *Example 9* published elsewhere in this issue of the **Federal Register**].

(e) [The text of the proposed amendments to § 1.954–3(e) is the same as the text of § 1.954–3T(e) published elsewhere in this issue of the **Federal Register**].

(f) [The text of the proposed amendments to § 1.954–3(f) is the same as the text of § 1.954–3T(f) published elsewhere in this issue of the **Federal Register**].

(g) [The text of the proposed amendments to § 1.954–3(g) is the same as the text of § 1.954–3T(g) published elsewhere in this issue of the **Federal Register**].

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–30729 Filed 12–24–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–148568–04]

RIN 1545–BD93

Employer's Annual Federal Tax Return and Modifications to the Deposit Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document revises the notice of proposed rulemaking published in the **Federal Register** on January 3, 2006. In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the annual filing of Federal employment tax returns and requirements for employment tax deposits under sections 6011 and 6302 of the Internal Revenue Code (Code). Those temporary regulations generally allow certain employers to file a Form 944, ''Employer's ANNUAL Federal Tax Return,'' rather than Form 941, ''Employer's QUARTERLY Federal Tax Return.'' In addition to rules related to Form 944, those temporary regulations provide an additional method for employers who file Form 941 to determine whether the amount of accumulated employment taxes is considered de minimis. The temporary and proposed regulations affect taxpayers that file Form 941, ''Employer's QUARTERLY Federal Tax Return,'' Form 944, ''Employer's ANNUAL Federal Tax Return,'' and any related Spanish-language returns or returns for U.S. possessions. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by March 30, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–148568–04), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–148568–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–148568–04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Audra M. Dineen at (202) 622–4910; concerning submissions of comments and requests for a public hearing, Oluwafunmilayo Taylor of the Publications and Regulations Branch at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Regulations on Employment Taxes and Collection of Income Tax at Source (26 CFR part 31) under section 6011 relating to the federal employment tax return filing requirements and section 6302 relating to the employment tax deposit requirements. The regulations concern the reporting and paying of income taxes withheld from wages and taxes under the Federal Insurance Contributions Act (FICA). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations. The temporary and proposed regulations are part of the IRS's effort to reduce taxpayer burden by permitting certain employers to file one return annually to report their employment tax liabilities instead of four quarterly returns.

Proposed Effective/Applicability Date

The regulations, as proposed, will apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. Chapter 6). The regulations under sections 6011 and 6302 affect only a small number of taxpayers that file employment tax returns. Therefore, the Treasury Department and the IRS have determined that these regulations will not affect a substantial number of small entities. In addition, the Treasury Department and the IRS have determined that any impact on entities affected by the regulations will not be significant. The regulations merely allow certain employers to file their employment tax return annually rather than quarterly. Therefore, these regulations will reduce the burden on these employers, by reducing the number of returns they must file each year. Based on these facts, the IRS has determined that these regulations will not have a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the substance of the

proposed regulations, as well as on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these final regulations are Raymond Bailey and Audra M. Dineen of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph. 1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 31.6011(a)–1, which was proposed to be amended at 71 FR 46 on January 3, 2006, is further amended by revising paragraph (a)(1) and paragraph (a)(5) and adding paragraph (g) to read as follows:

§ 31.6011(a)–1 Returns under Federal Insurance Contributions Act.

(a) * * * (1) [The text of proposed § 31.6011(a)–1(a)(1) is the same as the text of § 31.6011(a)–1T(a)(1) published elsewhere in this issue of the **Federal Register**].

* * * * *

(5) [The text of proposed § 31.6011(a)–1(a)(5) is the same as the text of § 31.6011(a)–1T(a)(5) published elsewhere in this issue of the **Federal Register**].

* * * * *

(g) [The text of proposed § 31.6011(a)–1(g) is the same as the text of § 31.6011(a)–1T(g) published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 31.6011(a)–4, which was proposed to be amended at 71 FR 46 (January 3, 2006), is further amended by revising paragraphs (a)(1) and (a)(4) and adding paragraph (d) to read as follows:

§ 31.6011(a)–4 Returns of income tax withheld.

(a)* * *(1) [The text of proposed § 31.6011(a)–4(a)(1) is the same as the text of § 31.6011(a)–4T(a)(1) published elsewhere in this issue of the **Federal Register**].

* * * * *

(4) [The text of proposed § 31.6011(a)–4(a)(4) is the same as the text of § 31.6011(a)–4T(a)(4) published elsewhere in this issue of the **Federal Register**].

* * * * *

(d) [The text of proposed § 31.6011(a)–4(d) is the same as the text of § 31.6011(a)–4T(d) published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 31.6302–0 is amended by revising the entries for § 31.6302–1(f)(4)(i), (g)(1) and (n) to read as follows:

§ 31.6302–0 Table of contents.

* * * * *

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(f) * * *

(4) * * *

(i) [The text of the proposed entry for § 31.6302–1(f)(4)(i) is the same as the text of the entry for § 31.6302–1T(f)(4)(i) published elsewhere in this issue of the **Federal Register**].

* * * * *

(g) * * *

(1) [The text of the proposed entry for § 31.6302–1(g)(1) is the same as the text of the entry for § 31.6302–1T(g)(1) published elsewhere in this issue of the **Federal Register**].

* * * * *

(n) [The text of the proposed entry for § 31.6302–1(n) is the same as the text of the entry for § 31.6302–1T(n) published elsewhere in this issue of the **Federal Register**].

Par. 5. Section 31.6302–1, which was proposed to be amended at 71 FR 46 on January 3, 2006, is further amended by revising paragraphs (b)(4), (c)(5), (c)(6), (d) *Example 6,* (e)(2), (f)(4), (f)(5) *Example 3,* (g)(1) and (n) to read as follows:

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(b)* * *

* * * * *

(4) [The text of proposed § 31.6302–1(b)(4) is the same as the text of § 31.6302–1T(b)(4) published elsewhere in this issue of the **Federal Register**].

(c) * * *

(5) [The text of proposed § 31.6302–1(c)(5) is the same as the text of § 31.6302–1T(c)(5) published elsewhere in this issue of the **Federal Register**].

(6) [The text of proposed § 31.6302–1(c)(6) is the same as the text of § 31.6302–1T(c)(6) published elsewhere in this issue of the **Federal Register**].

(d)* * *

Example 6. [The text of proposed § 31.6302–1(d) *Example 6* is the same as the text of § 31. 6302–1T(d) *Example 6* published elsewhere in this issue of the **Federal Register**].

(e) * * *

(2) [The text of proposed § 31.6302–1(e)(2) is the same as the text of § 31.6302–1T(e)(2) published elsewhere in this issue of the **Federal Register**].

(f) * * *

(4) [The text of proposed § 31.6302–1(f)(4) is the same as the text of § 31.6302–1T(f)(4) published elsewhere in this issue of the **Federal Register**].

(5) * * *

Example 3. [The text of proposed § 31.6302–1(f)(5) *Example 3* is the same as the text of § 31. 6302–1T(f)(5) *Example 3* published elsewhere in this issue of the **Federal Register**].

(g) * * * (1) [The text of proposed § 31.6302–1(g)(1) is the same as the text of § 31. 6302–1T(g)(1) published elsewhere in this issue of the **Federal Register**].

* * * * *

(n) [The text of proposed § 31.6302–1(n) is the same as the text of § 31.6302–1T(n)(1) published elsewhere in this issue of the **Federal Register**].

* * * * *

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–30592 Filed 12–24–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AC87

Management of National Forest System Surface Resources With Privately Held Mineral Estates

AGENCY: Forest Service, USDA.

ACTION: Advance notice of proposed rulemaking; request for comment.

SUMMARY: The Forest Service is preparing to promulgate regulations to provide clarity and direction on the management of National Forest System surface resources when the mineral estate is privately held.

DATES: Comments must be received in writing by February 27, 2009.

ADDRESSES: Written comments concerning this advance notice of proposed rulemaking notice should be addressed to Forest Service, USDA, attn: Director, Minerals and Geology Management, at Mail Stop 1126, Washington, DC 20250–1126; by electronic mail to *36cfr251@fs.fed.us;* or by fax to (703) 605–1575; or by the electronic process available at Federal e-Rulemaking portal at *http://www.regulations.gov.* All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 1601 N. Kent Street, Suite 500, Arlington, Virginia 22209 during regular business hours (8:30 a.m. to 4 p.m.), Monday through Friday, except holidays. Visitors are encouraged to call ahead to (703) 605–4792 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Ivette E. Torres, Liaison Specialist, Minerals & Geology Management. Phone Number: (703) 605–4792, or (703) 615–7813. E-mail: *ietorres@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Forest Service intends to engage in rulemaking to provide clarity and direction on the management of the National Forest System surface resources when the mineral estate is privately held and fulfill the statutory mandate on the Allegheny National Forest in Pennsylvania. To that end, it hereby seeks public comment on the scope and direction of the intended rulemaking, including, but not limited to, the identification of the issues and concerns related to private oil and gas development on the Allegheny National Forest which would be appropriately considered in this rulemaking effort.

The proposed regulation will clarify and expand policy at 36 CFR 251.15—Conditions, rules and regulations to govern exercise of mineral rights reserved in conveyances to the United States, and be consistent with 36 CFR part 251 subpart D—Access to Non-Federal Lands. The proposed rulemaking is also intended to fulfill the mandate set forth by section 2508 of the Energy Policy Act of 1992, Public Law 102–486, 106 Stat. 3108–3109, which has been codified at 30 U.S.C. 226(o), concerning private oil and gas development on the Allegheny National Forest. Section 2508 requires 60-day prior notification and clarifies content requirements of the notification. The Forest Service invites public comment as it prepares for this rulemaking.

Regulatory Findings

This advance notice of proposed rulemaking is being issued to obtain public comment and provide clarity and direction on the management of National Forest System surface resources when the mineral estate is privately held, and to fulfill the statutory mandate in 30 U.S.C. 226(o), regarding the Allegheny National Forest in Pennsylvania. The Department is not proposing any specific approaches for managing non-Federal lands; there are no regulatory findings associated with this notice. Comments received will help the Department determine the extent and scope of any future rulemaking.

Conclusion

The Department of Agriculture is considering how best to proceed with engaging the public in identifying with issues and concerns related to private oil and gas developments on the Allegheny National Forest. Through this advance notice of proposed rulemaking, the Department is seeking public input as responses to concerns about the management of National Forest System surface resources when the mineral estate is privately held. Public input and comment will help inform the Department's consideration of how best to proceed with long-term uses and management of these areas. How the Department ultimately addresses the final rule will depend on a number of factors. These include court decisions, public comments, and practical options for amending the current rule, an EIS or both, using other administrative tools to implement land uses and access to non-Federal lands.

Dated: December 17, 2008.

Sally D. Collins,

Associate Chief.

[FR Doc. E8–30742 Filed 12–24–08; 8:45 am]

BILLING CODE 3410–11–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2008–8]

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is conducting its triennial rulemaking proceeding in accordance with a provision of the Copyright Act which was added by the Digital Millennium Copyright Act and which provides that the Librarian of Congress may exempt certain classes of works from the prohibition against circumvention of technological measures that control access to copyrighted works. The purpose of this rulemaking proceeding is to determine whether there are particular classes of works as to which users are, or are likely to be, adversely affected in their ability to make noninfringing uses due to the prohibition on circumvention. This notice publishes the classes of works that the Office will consider for exemption, which were proposed in the comment period that ended on December 2, 2008. This Notice further reiterates the previously published request for responsive written comments from all interested parties, including representatives of copyright owners, educational institutions, libraries and archives, scholars, researchers and members of the public, in order to elicit additional evidence either supporting or opposing the classes of works proposed for exemption.

DATES: Comments addressing the proposed classes of works are due by 5:00 P.M. E.S.T., February 2, 2009.

ADDRESSES: All of the comments proposing classes of works for exemption are available on the Copyright Office website at: http://www.copyright.gov/1201/2008/index.html and at the U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC. Electronic submissions must be made through the Copyright Office website: http://www.copyright.gov/1201/comment_forms; *see* 73 FR 58073, 58078 (October 6, 2008) (available at:

http://www.copyright.gov/fedreg/2008/73fr58073.pdf) for file formats and other information about electronic and non–electronic filing requirements. If hand–delivered by a private party, an original and five copies of any comment to Room LM–401 of the James Madison Memorial Building between 8:30 a.m. and 5 p.m. and the envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If hand delivered by a commercial courier, an original and five copies of any comment must be delivered to the Congressional Courier Acceptance Site located at Second and D Streets, NE., Washington, DC, between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Copyright Office General Counsel, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington DC. If delivered by means of the United States Postal Service (*see*73 FR 58073, 58078 (October 6, 2008), available at: http://www.copyright.gov/fedreg/2008/73fr58073.pdf, about continuing delays), comments should be addressed to Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024–0400. Comments may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: Rob Kasunic, Principal Legal Advisor, Office of the General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024–0400. Telephone (202) 707–8380; telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION: On October 6, 2008, the Copyright Office published a Notice of Inquiry in the Federal Register to initiate the fourth triennial rulemaking proceeding required by § 1201(a)(1)(C) of the Copyright Act. That notice requested comments from interested parties proposing classes of works that should be considered for exemption for the next three–year period, from October 28, 2009, until October 27, 2012. The Copyright Office received 19 comments, containing 25 classes of works proposed for exemption.[1] On December 3, 2008, the Copyright Office posted all of the comments received on its website, including the description of the proposed classes and summaries of the arguments supporting these proposed classes as provided by the commenters. *See*http://www.copyright.gov/1201/2008/index.html. In order to provide additional notice to interested parties, the Copyright Office is herein listing the proposed classes and the person and/or entity that proposed the class. Where the summary of the argument and/or the argument in the comment suggests additional refinement to an otherwise broad designation of a class or category of works, additional bracketed information has been added by the Copyright Office. The Copyright Office is adding this information, in part, to make it clear that the proposal, even if stated in broad terms, is limited generally by the context in which it was raised. A responsive comment that seeks to leverage an untailored, overly broad designation of a class into a wholly new class of works will not have properly raised a new class in this proceeding and such a new class will not be considered. After the close of the comment period that ended on December 2, 2008, a new class can be raised in this proceeding only through the process established by the Office for untimely submissions of proposed classes based on exceptional or unforeseen circumstances, *see*73 FR 58073, 58079 (October 6, 2008) (available at: http://www.copyright.gov/fedreg/2008/73fr58073.pdf. The forthcoming comment period allows the introduction of additional factual information that would assist the Office in assessing whether a proposed class is warranted for exemption and, if it is, how such a class *already proposed* should be properly tailored.

The comments received by the Copyright Office propose the following classes:

1. ''Literary works'' [distributed in ebook format when all existing ebook editions of the work (including digital text editions made available by authorized entities) contain access controls that prevent the enabling either of the book's read–aloud function or of screen readers that render the text into a specialized format]. Proponent: The American Foundation for the Blind.

2.''Subscription based services that offer DRM–protected streaming video where the provider has only made available players for a limited number of platforms, effectively creating an access control that requires a specific operating system version and/or set of hardware to view purchased material.'' Proponent: Megan Carney.

3.''Motion pictures protected by anti–access measures, such that access to the motion picture content requires use of a certain platform.'' Proponent: Mark Rizik.

4A.''Commercially produced DVDs used in face–to–face classroom teaching by college and university faculty, regardless of discipline or subject taught, as well as by teachers in K–12 classrooms.'' Proponent: Gary Handman, Media Resources Center, UC Berkeley.

4B. ''Audiovisual works used by instructors at accredited colleges or universities to create compilations of short portions of motion pictures for use in the course of face–to–face teaching activities.'' Proponent: Kevin L. Smith, Duke University.

4C. ''Audiovisual works that illustrate and/or relate to contemporary social issues used for the purpose of teaching the process of accessing, analyzing, evaluating, and communicating messages in different forms of media.'' Proponent: Renee Hobbs.

4D. ''Audiovisual works that illustrate and/or relate to contemporary social issues used for the purpose of studying the process of accessing, analyzing, evaluating and communicating messages in different forms of media, and that are of particular relevance to a specific educational assignment, when such uses are made with the prior approval of the instructor.'' Proponent: Renee Hobbs.

4E. ''Audiovisual works contained in a college or university library, when circumvention is accomplished for the purpose of making compilations of portions of those works for educational use in the classroom by media studies or film professors.'' Proponent: Peter DeCherney, University of Pennsylvania.

4F. ''Audiovisual works contained in a college or university library, when circumvention is accomplished for the purpose of making compilations of portions of those works for coursework by media studies or film students.'' Proponent: Peter DeCherney, University of Pennsylvania.

4G. ''Audiovisual works included in a library of a college or university, when circumvention is accomplished for the purpose of making compilations of portions of those works for educational use in the classroom by professors.'' Proponents: Library Copyright Alliance and the Music Library Association.

4H. ''All audiovisual works and sound recordings 'used in face–to–face classroom teaching by college and university faculty, regardless of

[1] This is an approximation based on the manner in which the proposed classes were articulated. In some cases, the proposed class involved multiple categories of works within the class that could have been articulated as multiple classes. In other cases, there were multiple proposals that were variations on the same theme that could have been expressed as one class. In addition, a number of the proposals by different commenters proposed similar classes. The Office has chosen to group related classes in this Notice in order to help focus the issues raised by the commenters.

discipline or subject taught' and regardless of the source of the legally acquired item.'' Proponent: Gail Fedak.

5A. ''Computer programs that enable wireless telephone handsets to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the telephone handset.'' Proponents: Fred von Lohmann and Jennifer S. Granick, Electronic Frontier Foundation.

5B. ''Computer programs that operate wireless telecommunications handsets when circumvention is accomplished for the sole purpose of enabling wireless telephones to connect to a wireless telephone communication network.'' Proponent: MetroPCS Communications, Inc.

5C. ''Computer programs in the form of firmware or software that enable mobile communication handsets to connect to a wireless communication network, when circumvention is accomplished for the sole purpose of lawfully connecting to a wireless communication network.'' Proponent: Paul Posner, Youghiogheny Communications, Inc. D B A Pocket Communications, Inc.

5D. ''Computer programs in the form of firmware that enable wireless telephone handsets to connect to a wireless telephone communication network, when circumvention is accomplished for the sole purpose of lawfully connecting to a wireless telephone communication network, regardless of commercial motive.'' Proponent: Jonathan Newman, Wireless Alliance, LLC.

6.''Computer programs protected by dongles that prevent access due to malfunction or damage or hardware or software incompatibilities or require obsolete systems or obsolete hardware as a condition of access.'' Proponent: Joseph V. Montoro, Jr.

7. ''Computer programs'' [for forensic analysis]. Proponent: Gary Handman, Media Resources Center, UC Berkeley.

8A. ''Literary works, sound recordings, and audiovisual works accessible on personal computers and protected by technological protection measures that control access to lawfully obtained works and create or exploit security flaws or vulnerabilities that compromise the security of personal computers, when circumvention is accomplished solely for the purpose of good faith testing, investigating, or correcting such security flaws or vulnerabilities.'' Proponent: Alex Halderman, University of Michigan.

8B.''Video games accessible on personal computers and protected by technological protection measures that control access to lawfully obtained works and create or exploit security flaws or vulnerabilities that compromise the security of personal computers, when circumvention is accomplished solely for the purpose of good faith testing, investigating, or correcting such security flaws or vulnerabilities.'' Proponent: Alex Halderman, University of Michigan.

9A. ''Audiovisual works delivered by digital television (''DTV'') transmission intended for free, over–the–air reception by anyone, which are marked with a ''broadcast flag'' indicator that prevents, restricts, or inhibits the ability of recipients to access the work at a time of the recipient's choosing and subsequent to the time of transmission, or using a machine owned by the recipient but which is not the same machine that originally acquired the transmission.'' Proponent: Matt Perkins.

9B.''Audiovisual works embedded in a physical medium (such as Blu–Ray discs) which are marked for 'down–conversion' or 'down–resolutioning' (such as by the presence of an Image Constraint Token ''ICT'') when the work is to be conveyed through any of a playback machine's existing audio or visual output connectors, and therefore restricts the literal quantity of the embedded work available to the user (measured by visual resolution, temporal resolution, and color fidelity).'' Proponent: Matt Perkins.

10A. ''Lawfully purchased sound recordings, audiovisual works, and software programs distributed commercially in digital format by online music and media stores and protected by technological measures that depend on the continued availability of authenticating servers, when such authenticating servers cease functioning because the store fails or for other reasons.'' Proponent: Christopher Soghoian, Berkman Center for Internet & Society.

10B. ''Lawfully purchased sound recordings, audiovisual works, and software programs distributed commercially in digital format by online music and media stores and protected by technological measures that depend on the continued availability of authenticating servers prior to the failure of [authenticating] servers for technologists and researchers studying and documenting how the authenticating servers that effectuate the technological measures function.'' Proponent: Christopher Soghoian, Berkman Center for Internet & Society.

11A. ''Audiovisual works released on DVD, where circumvention is undertaken solely for the purpose of extracting clips for inclusion in noncommercial videos that do not infringe copyright.'' Proponents: Fred von Lohmann and Jennifer S. Granick, Electronic Frontier Foundation.

11B. ''Motion pictures and other audiovisual works in the form of Digital Versatile Discs (DVDs) that are not generally available commercially to the public in a DVD form not protected by Content Scramble System technology when a documentary filmmaker, who is a member of an organization of filmmakers, or is enrolled in a film program or film production course at a post–secondary educational institution, is accessing material for use in a specific documentary film for which substantial production has commenced, where the material is in the public domain or will be used in compliance with the doctrine of fair use as defined by federal case law and 17 U.S.C. § 107.'' Proponents: Kartemquin Educational Films, Inc. and the International Documentary Association.

These proposed classes represent a starting point for further consideration in this rulemaking proceeding. This Notice does not represent that any particular class proposed for exemption will ultimately be recommended for exemption by the Register of Copyrights to the Librarian of Congress. Moreover, the delineation of any class as proposed by a commenter will be considered in relation to the facts presented in the entire rulemaking process. To the extent that an exemption is deemed warranted by the evidence, a proposed class listed herein may be developed and/or refined by the Register in her final recommendation to the Librarian.

As stated in the Copyright Office's Notice of Inquiry published in the Federal Register on October 6, 2008, comments in support or in opposition to the classes proposed may be submitted during the 30–day period proceeding February 2, 2009. A comment form will be posted on the Copyright Office's website on January 2, 2009, to facilitate the submission of electronic comments responsive to class or classes of works proposed for exemption.**SEE** 73 FR 58073, 58078 (October 6, 2008) (available at: http://www.copyright.gov/fedreg/2008/73fr58073.pdf) for additional information about electronic and non–electronic filing requirements.

Persons submitting comments should thoroughly review the October 6 Notice of Inquiry to familiarize themselves with the substantive and formal requirements for comments. To be persuasive, a comment should comply

with the guidelines set forth in Section 3 of the Notice of Inquiry.

Tanya Sandros,

General Counsel.

[FR Doc. E8–30799 Filed 12–24–04; 8:45 am]

BILLING CODE 1410–30–S

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AN20

Elimination of Requirements for Prior Signature Consent and Pre- and Post-Test Counseling for HIV Testing

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) Informed Consent regulations to update requirements concerning testing for Human Immunodeficiency Virus (HIV) so that they are consistent with the Veterans' Mental Health and Other Care Improvements Act of 2008, which repealed provisions that had been enacted in 2003.

DATES: *Comments:* Comments must be received on or before January 28, 2009.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov*; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AN20.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments are available online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ronald O. Valdiserri, MD, MPH, Chief Consultant, Public Health SHG, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (202) 461–7240. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This proposed rule would amend VA's Informed Consent regulation for HIV testing in the medical regulations in 38 CFR part 17 to remove §§ 17.32(d)(1)(vi) and 17.32(g)(4). Section 124 of Public Law 100–322 (1988) (''section 124'') prohibited any VA program from widespread testing to identify HIV infections unless Congress specifically appropriated funds for such a program. The statute further required VA to ''provide for a program'' under which VA offered HIV testing to: (1) Any patient receiving care or services for intravenous drug abuse, diseases associated with HIV, and any patient otherwise at high risk for HIV infection; and (2) any patient requesting the test, unless medically contraindicated. No testing of any patient was permissible under section 124 without the prior written informed consent of the patient and the provision of pre-and-post-test counseling.

VA originally implemented the section 124 mandates in its informed consent policy, VHA Manual M–2, part I, chapter 23 (Feb. 15, 1990). (VA's informed consent policy is currently contained in VHA Handbook 1004.1, dated Jan. 29, 2003.) A few years after the enactment of section 124, VA established its current policy, which is codified in current 38 CFR 17.32(d)(1)(vi) and (g)(4), requiring signature consent and counseling for all HIV testing conducted by VA.

In 2008, the Administration proposed to Congress the repeal of section 124 for compelling clinical and public health reasons. VA's HIV testing procedures differ from other routine clinical testing that VA conducts, most of which only requires the patient's oral informed consent. The requirements for pre-test counseling and signed consent have been widely reported to delay testing for HIV infection, which, in turn, impairs VA's ability to identify infected patients who would benefit from earlier medical intervention. Because of the delay in testing, infected patients may unknowingly spread the virus to their partners and do not present themselves for treatment until complications of the disease become clinically evident and, often, acute. Infected patients who are, or become, pregnant can unknowingly spread the virus to their fetus. This is medically unacceptable when we now have continually improving therapies with which to clinically manage the disease effectively; in many cases, their efficacy is increased if provided during the early stages of infection.

In submitting the proposal for repeal of section 124 to Congress, the Administration was aware that the scientific literature indicated that the requirements of section 124 were outdated. For example, in one peer-reviewed published study, VA's data indicate that 50 percent of HIV-positive veterans had already suffered significant damage to their immune system by the time they were diagnosed as HIV positive. *See* Gandhi NR, Skanderson M, Gordon KS, Concato J, Justice AC. Delayed Presentation for Human Immunodeficiency Virus (HIV) Care Among Veterans, A Problem of Access or Screening? Medical Care. 2007; 45 (11): 1105–1109. These patients had, on average, 3.7 years of VA care before diagnosis, indicating that there were significant missed opportunities to make a diagnosis at a stage when HIV treatment could have prevented many of the complications experienced by these patients. *Id.*

As reported by the American Journal of Public Health, another group of VA researchers recently conducted a blinded seroprevalence survey of nearly 9,000 veteran inpatients and outpatients from 6 large VA sites. They found that the rates of previously undiagnosed HIV infection varied from 0.1 percent–2.8 percent among outpatients and from 0.0 percent–1.7 percent among inpatients. While these percentages may seem small, the CDC, based upon cost-effectiveness studies, identifies 0.1% as the threshhold above which HIV testing should routinely take place in health care settings. *See* Owens DK, Sundaram V, Lazzeroni LC, Douglass LR, Sanders GD, *et al.* Prevalence of HIV Infection Among Inpatients and Outpatients in Department of Veterans Affairs Health Care Systems: Implications for Screening Programs for HIV. Am J Public Health. 2007; 97 (12): 2173–2178.

Historically, HIV testing was driven based on an assessment of risk, i.e., if the patient reported a behavior associated with HIV transmission, the test was strongly encouraged. This was a major reason for extensive pre-test counseling. However, over time, risk-based strategies for HIV testing in clinical settings proved to be inefficient, for a variety of reasons. Some patients are unwilling to share personal information about sexual and drug use behaviors with providers; some patients are unaware of their risks (*e.g.*, someone who has a sex partner who doesn't disclose the fact that he/she is an injection drug user); risk-based testing fails to identify many HIV-infected persons until late in the course of their disease; and some patients may continue to misperceive HIV infection as a disease limited only to homosexuals, injection drug users, and persons with multiple, anonymous sexual partners.

In 2006, the Centers for Disease Control and Prevention (CDC) recommended routine HIV screening in

health-care settings for all patients aged 13–64, and further that ''separate written consent for HIV testing should not be required; general consent for medical care should be considered sufficient to encompass consent for HIV testing.'' Centers for Disease Control and Prevention. Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings. MMWR 2006; 55 (Mp/RR–14): 1–17. The VA submitted the proposal to repeal section 124 to make its screening procedures and informed consent requirements for HIV testing in line with CDC's recommendations.

In short, the Administration sought the repeal of section 124 to enable VA to bring its informed consent policy and procedures for HIV testing into line with current standards of practice, to improve potential health outcomes of infected patients, and to advance the country's broader public health goals.

During the second session of the 110th Congress, the Senate and House each introduced legislation that mirrored the Administration's legislative proposal to repeal section 124. VA testified in support of the pending legislation, while making clear that such a repeal would not erode patient rights, as VA would still be legally required to obtain the patient's oral informed consent prior to testing.

The House Committee on Veterans' Affairs explained its legislation would reduce existing barriers to the early diagnosis of HIV infection, recognizing that HIV testing had entered a new era. Through the repeal of section 124, the Committee intended to facilitate patients' awareness of their HIV status to help them maintain their health and reduce further spread of the virus. The Committee also intended for the repeal to allow VA to update its informed consent procedures for HIV testing to reflect CDC guidelines, while affording VA needed flexibility to update its screening standards as necessary. See House Rep. No. 110–786, at 4, 7–9 (2008). The Senate Committee on Veterans' Affairs similarly explained that its measure would bring VA's statutory HIV testing requirements in line with current CDC informed consent guidelines for HIV testing, thereby benefiting patients who receive early medical intervention and advancing the country's broader public health goals. See S. Rep. No. 110–473, at 44–45 (2008).

The repeal of section 124 was ultimately included as section 407 of S. 2162, the ''Veterans' Mental Health and Other Care Improvements Act of 2008,'' which subsequently passed both chambers of Congress. The President signed S. 2162 into law on October 10, 2008 (Pub. L. 110–387). However, by repealing section 124, Congress did not abrogate VA's current requirements for written informed consent and counseling codified in 38 CFR 17.32(d)(1)(vi) and (g)(4). It merely repealed statutory requirements that VA's HIV-testing policy include prior written consent and pre- and post-test counseling. VA's current informed consent regulation governing HIV testing remains in effect contrary to the stated intentions of both the Congress and the Administration. To enable VA to bring its policy into conformance with the purpose of the legislation as well as with current medical practice, VA must remove the provisions of 38 CFR 17.32(d)(1)(vi) and (g)(4).

We note that with the changes proposed in this document, VA's informed consent procedures for HIV testing would be governed by the requirements of 38 CFR 17.32(c), and would still be more rigorous than those generally found in the private sector. While other institutions often allow ''presumed'' consent or ''blanket'' consent for many procedures, VA regulations, as outlined in VHA Handbook 1004.1 (VHA Informed Consent for Clinical Treatments and Procedures, which may be viewed at *http://www.ethics.va.gov/docs/policy/VHA_Handbook_1004–1_Informed_Consent_Policy_20030129.pdf*), require specific informed consent for all treatments and procedures, including HIV tests. In addition to requiring that VA practitioners disclose ''information that a patient in similar circumstances would reasonably want to know,'' VA would specifically require VA practitioners to inform patients that they are being tested for HIV, to provide written educational materials on HIV and HIV testing, to provide patients an opportunity to decline HIV testing, and to document patients' oral agreement to HIV testing in their health records. Furthermore, the proposed rule would not in any way alter the statutory confidentiality protections that apply to the disclosure of VA patients' HIV test results.

In summary, after promulgation of this rule, HIV testing in VA facilities would be governed by the following:

- Providers would have to inform patients that they intend on ordering an HIV test.
- Providers would be required to give patients written educational materials that include an explanation of HIV infection and the meaning of positive and negative test results.
- The educational materials will be made available in the languages of the most commonly encountered populations within the service area.
- Providers would be required to offer patients an opportunity to ask questions and to consent to or decline testing.
- Refusal of HIV testing would not affect a patient's eligibility for any other care at a VA facility.
- As is the case for other tests performed in the VA, providers would be required to document the patient's informed consent in the patient's electronic health record.
- Definitive mechanisms would be established to inform patients of their test results.
- HIV-positive test results would always be communicated confidentially through personal contact with a health care provider.
- HIV-infected patients would be promptly referred for necessary clinical care, counseling, support, and prevention services.

Further information on VA's policy and procedures on HIV testing may be found at *http://www.hiv.va.gov.*

Comment period

VA believes, based upon the circumstances described above, that it is consistent with the repeal of the prior legislation and in the public's interest to bring VA's informed consent policy and procedures for HIV testing into line with current standards of practice as quickly as possible. This will improve the potential health outcomes of infected patients and advance the country's broader public health goals. Accordingly, VA has determined that it is not in the public's interest to delay implementation of this regulation any longer than necessary, and we have provided that comments must be received within 30 days of publication in the **Federal Register**.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on State, local, and tribal governments or the private sector.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would directly affect only individuals and would not directly affect small entities. Therefore, this proposed amendment is exempt pursuant to 5 U.S.C. 605(b) from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

This proposed rule would affect the program that has the following Catalog of Federal Domestic Assistance program number and title: 64.009—Veterans Medical Care Benefits. To the extent that VA directly provides medical care to patients under the Civilian Health and Medical Program of the Department of Veterans Affairs or other programs, this rule would also affect those programs, which have no Catalog of Federal Domestic Assistance program numbers.

List of Subjects in Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs, veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, and Veterans.

Approved: October 31, 2008.

James B. Peake,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 17 as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, and as noted in specific sections.

§ 17.32 [Amended]

2. Section 17.32 is amended:

a. In paragraph (d)(1)(iv), by adding ''or'' after the semi-colon at the end of the paragraph.

b. In paragraph (d)(1)(v), by removing ''; or'' and adding, in its place, a period at the end of the paragraph.

c. By removing paragraph (d)(1)(vi).

d. By removing paragraph (g)(4).

[FR Doc. E8–30841 Filed 12–24–08; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

New Standards for Letter-Size Booklets and Folded Self-Mailers

AGENCY: Postal Service ™.

ACTION: Proposed rule.

SUMMARY: On March 14, 2008, we published in the **Federal Register** (Volume 73, Number 51, pages 13812–13813) an advance notice of our intent to develop new mailing standards for folded self-mailers and booklets mailed at automation and machinable letter prices. In that advance notice, we provided justification for these changes, announced a two-phase testing initiative, and reported the results of the first phase of testing. We invited comments from customers and asked that they suggest alternative booklet designs that could improve mailpiece performance.

The following proposed rule is based on the results of completed testing. We propose revisions to tab size, tab location, paper weight, and dimensions for folded self-mailers and booklets mailed at automation or machinable letter prices.

DATES: We must receive your comments on or before January 28, 2009.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 3436, Washington, DC 20260–3436. You may inspect and photocopy all written comments at USPS Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor N., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Susan Thomas, 202–268–7268.

SUPPLEMENTARY INFORMATION: Many folded self-mailers and booklets mailed at automation and machinable letter prices do not process successfully on letter-sorting machines. Unenveloped pieces tend to double feed and jam resulting in damage to the equipment and the mail. These problems and the resulting loss of machine time make it necessary to process some types of folded self-mailers and booklets on flat sorting equipment or in manual operations. Typically these operations are slower and more labor intensive resulting in higher processing costs. To improve efficiency, the USPS ® worked with customers to test multiple mailpiece designs and arrived at revised standards that improve automation processing.

In addition to the controlled testing of 400 specially-manufactured mailpieces, in phase two of the testing our Engineering Department also evaluated 124 live mailings and tested 70 sample mailings provided by customers to determine optimal size, thickness, cover stock, tab style, tab strength, tab location and binding. Several customers actively participated and were present to observe the tests. When a mailpiece was nonmachinable, customers were encouraged to resubmit modified pieces for additional testing and evaluation.

We are sensitive to the current economic climate and the effect these changes may have on the mailing community. Based on the results of our tests we identified incremental

opportunities for improvement while preserving as many mailpiece design options as possible. Our proposed standards and the resulting changes to folded self-mailer and booklet designs will make it possible to sort this type of mail on automation letter sorting equipment. These changes align with our operational goals to increase delivery point sequencing of letter mail in an effort to control costs and improve service. We will continue to monitor folded self-mailer and booklet performance in the automation mailstream and update the requirements as needed to reduce jams and mailpiece and machine damage. Revised standards for postcards and letter-sized cards will be issued in a subsequent **Federal Register** notice.

Overview of Comments

We received five comments in response to our advance notice. All the commenters expressed concern that tabs without perforations would make mailpieces hard to open.

Enveloped letters are sorted at a rate of 10 pieces per second on automation equipment. Tabbed folded self-mailers and letter-size booklets do not process like enveloped letters. Our tests revealed that tabs with perforations are easily broken and do not maintain their integrity while being transported or during automated letter sorting. Folded self-mailers and booklets may be damaged if the seals used as closures fail during high-speed processing. To minimize these issues, we concluded that tabs on folded self-mailers and booklets may not be perforated. We will continue to accept tabs without perforations made of plastic, vinyl, translucent paper, opaque paper and cellophane tape closures.

Summary of Changes and Implementation

The following proposed changes to the design of folded self-mailers and booklets will make it possible to process them in the automated letter mailstream. References to paper weights are for book-grade paper unless otherwise specified. A conversion table to other paper grades is included in DMM® Exhibit 201.3.2.

Examples of folded self-mailer and booklet designs are:

- A folded self-mailer is a single continuous sheet of paper folded to create a letter-size mailpiece.
- Booklets consist of multiple sheets of paper. Multiple sheets may be folded together to form a letter-sized booklet. Booklets may be perfect bound or permanently fastened with staples or another method that creates a uniformly thick mailpiece. Bound booklets may be folded for mailing if the final mailpiece remains uniform in thickness.
- We are proposing the use of tabs with no perforations. Tab size is dictated by the design of the mailpiece. Booklets need three 1½-inch tabs and folded self-mailers need two 1-inch tabs. For larger and heavier booklets, we recommend 2-inch paper tabs.
- Glue spots or a continuous glue line may be used to seal some folded self-mailer and booklet designs.
- We will continue the current maximum weight of 3 ounces. However, 3-ounce booklets are processed with the least amount of damage when the final trim size is reduced to 9 inches in length.

Booklets

- Maximum size: 6 inches high by 10½ inches long by 0.25 inches thick.
- Cover stock: 40 pound minimum basis weight for some designs: 60- or 70-pound minimum for pieces longer than 9 inches. Lighter paper is more easily damaged in processing. We strongly recommend the use of 70-pound paper as cover stock on mailpiece designs that approach maximum letter-size dimensions. The use of paper that is 10 pounds heavier than the required minimum basis weight is recommended for better performance.

Optional Booklet Preparation—Oblong

Oblong booklets must be prepared with a spine on the leading edge. Booklets with a spine on the trailing edge are not machinable.

Folded Self-Mailers

Changes include:

- A new definition of folded self-mailers which limits pieces to those made from one continuous sheet of paper.
- Maximum size: 6 inches high by 10½ inches long by 0.25 inches thick.
- Paper stock from 50 to 70 pounds, depending on the design of the mailpiece.
- Increased size, placement, and number of tabs.

Nonmachinable Pieces

A nonmachinable price (for Standard Mail®), a surcharge (for First-Class Mail®), or a nonbarcoded price (for Periodicals) applies to booklets and folded self-mailers that do not comply with the proposed standards and are too small to be mailed at flats prices. Such pieces are not eligible for automation or machinable letter prices.

Implementation

We propose to implement these standards in May 2009, concurrent with the Mailing Services price change.

Although the Postal Service is exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR 111 is proposed to be amended as follows.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) as follows:

* * * * *

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

200 Commercial Mail Letters and Cards

201 Physical Standards

1.0 Physical Standards for Machinable Letters and Cards

1.1 Physical Standards for Machinable Letters

* * * * *

1.1.3 All Machinable Letters

[Revise the first sentence of 1.1.3 as follows:]

All pieces of First-Class Mail and Standard Mail machinable letters must meet the standards for automation-compatible letters in 201.3.0. * * *

* * * * *

3.0 Physical Standards for Machinable Letters and Cards

[Revise text of 3.1 as follows:]

3.1 Basic Standards for Automation Letters and Cards

Letters and cards claimed at any machinable or automation card or letter

price or Standard Mail Enhanced Carrier Route letter price must meet the standards in 3.0. Unless prepared as a folded self-mailer, booklet, or postcard under 3.15 through 3.17, each machinable or automation letter must be a sealed envelope (the preferred method) or, if unenveloped, must be sealed or glued completely along all four sides. Machinable and automation pieces must not be sealed with tabs on the bottom edge.

[Delete current 3.4 through 3.6 in their entirety.]

[Renumber current 3.2 through 3.3 as new 3.4 through 3.5.]

[Add new 3.2 and new 3.3 as follows:]

3.2 Paper

Mailpieces must be constructed from high tear strength paper stock. All references in 3.0 to paper basis weight are for book-grade paper unless otherwise stated. The conversion table in Exhibit 3.2 provides a paper basis weight cross-reference. The paper basis weights are based on the weight of 500 sheets of 17 × 22 inch bond-grade paper, 25 × 38 inch sheets of book-grade paper, and 20 × 26 inch sheets of cover-grade paper.

EXHIBIT 3.2—PAPER BASIS WEIGHT CONVERSION TABLE

If you use book paper weight of (pounds)	Then you can use bond paper weight of (pounds)	Or cover paper weight of (pounds)
40	16	22
50	20	27
55	22	30
60	24	33
70	28	40
75	30	41
80	31	44
90	36	50
100	40	56
110	44	60
128	50	70

3.3 Static and Coefficient of Friction

Letter-sized machinable and automation mailpieces must be made of paper material with the following characteristics:

a. Static charge of less than 2 KV when tested using test method ASTM D4470.

b. Kinetic coefficient of friction between 0.26 and 0.34 when tested as paper to same paper using test method ASTM D 4917.

[Revise heading and text of renumbered 3.4 as follows:]

3.4 Dimensions and Shape

Each machinable or automation letter-sized piece must be rectangular (see 1.1.1) and, except folded self-mailers and booklets, must meet the following standards:

a. Height: not more than 6⅛ inches or less than 3½ inches high.

b. Length: not more than 11½ inches or less than 5 inches long.

c. Thickness: not more than 0.25 inch or less than 0.009 inch thick.

d. Dimensions and shape standards for folded self-mailers see 3.15; for booklets, see 3.16.

* * * * *

[Renumber current 3.7 through 3.13 as new 3.8 through 3.14 and add new 3.6 as follows:]

3.6 Maximum Weight, Machinable and Automation Letters and Cards

a. Booklets and folded self-mailers—3 ounces.

b. Machinable enveloped letters and cards—3.3 ounces.

c. Automation enveloped letters and cards—3.5 ounces (see 3.7 for pieces over 3 ounces.)

[Renumber current 3.14.4 as new 3.7 and revise as follows:]

3.7 Heavy Letter Mail (Over 3 Ounces)

Heavy letter mail (letter-size pieces over 3 ounces) must be prepared in a sealed envelope, may not contain stiff enclosures, and must have a POSTNET or an Intelligent Mail barcode with a delivery point routing code in the address block (see 202.5.0).

* * * * *

[Revise renumbered 3.12 as follows:]

3.12 Tabs, Tape, and Glue

Tabs on booklets must be at least 1½ inches in diameter. Tabs on folded self-mailers must be at least 1 inch in diameter. The tab placement standards in 3.15 and 3.16 are subject to ¼-inch variance in either direction. Tabs may be made of opaque paper, translucent paper, vinyl or plastic and must not contain perforations. Cellophane tape may also be used as a closure. The following standards also apply:

a. Translucent paper tabs should be made of paper with a minimum of 40-pound basis weight.

b. Opaque paper tabs should be made of a minimum of 60-pound basis weight paper with a tear strength of at least 56 grams of force in the machine direction (MD) and 60 grams of force in the cross direction (CD).

c. Tabs in the barcode clear zone must have a paper face meeting the standards for background reflectance and, if the barcode is not preprinted by the mailer, the standards for acceptance of water-based ink.

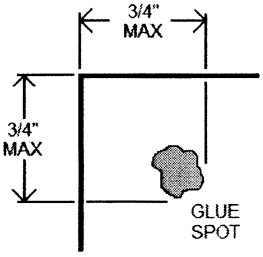
d. Vinyl tabs and cellophane tape closures are not acceptable within the barcode clear zone.

e. Tabs must be tight against the edge of the mailpiece. A maximum 1/32-inch overhang is recommended.

f. Two-inch opaque paper tabs are strongly recommended for booklets over 2.5 ounces.

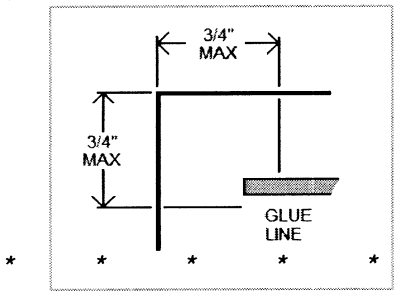
g. Glue spots may be used in lieu of tabs on some folded self-mailer designs (see 3.15.4). and must be placed within ¾ inch of the open edges (see Exhibit 01.3.12.g)

Exhibit 201.3.12.g Glue Spot Placement



h. Continuous glue lines may be used as cover-to-cover seals on some designs (see 3.15.4 and 3.16.4). and must be placed along the entire length of the open edge and end no more than ¾ inch from the open ends (see Exhibit 201.3.12.h)

Exhibit 201.3.12.h Glue Line Placement



* * * * *

[Renumber current 3.14.1 as new 3.15 and revise title and text as follows:]

3.15 Folded Self-Mailers

3.15.1 Definition

A folded self-mailer is a single, continuous sheet of paper with no binding, folded to create a letter-size mailpiece.

3.15.2 Paper Weight

Folded self-mailers generally must be made of paper with a minimum 50 pound basis weight or equivalent. The minimum basis weight is higher for some designs (see exhibit 3.15.4).

3.15.3 Physical Standards for Folded Self-Mailers

Folded self-mailers must meet the following standards:

a. Height: not more than 6 inches or less than 3.5 inches high.

b. Length: not more than 10.5 inches or less than 5 inches long.

c. Thickness: not more than 0.25 inch or less than 0.009 inch thick.

d. Weight: not more than 3 ounces.

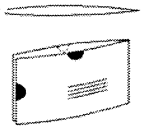
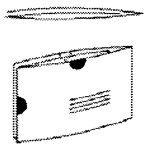
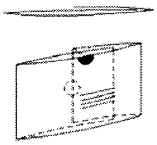
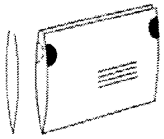
e. Aspect ratio: within 1.3 to 2.5 (see 201.3.1).

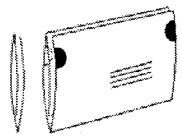
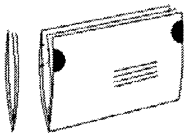
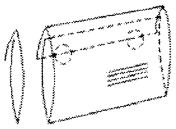
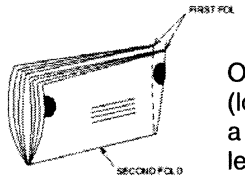
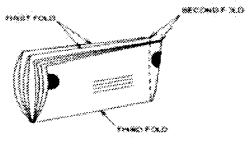
3.15.4 Folded Self-Mailer Design and Sealing

Additional tabs or seals may be used. Do not place tabs or seals on the bottom edge of the mailpiece (see exhibit 3.15.4).

Exhibit 3.15.4 Folded Self-Mailer Design

BILLING CODE 7710–12–P

If the final fold is...		And the length is...	The cover stock must be at least...	Mailers must seal the piece with...	And seal the mailpiece at these locations
	On the leading (shorter) edge, with no other folds	5" to 10.5" long	70-pound	Two 1" non-perforated tabs or glue spots, or continuous glue line	One tab or glue spot on top edge; one tab or glue spot on trailing edge. Position the tabs or glue spots in the center of each edge. Or use continuous glue line to seal along the entire trailing edge.
	On the leading (shorter) edge, with an intermediate fold on the trailing edge				
	On the leading (shorter) edge, with an intermediate fold on the trailing edge	5" to 10.5" long	70-pound	Two 1" non-perforated tabs or glue spots, or continuous glue line	One tab or glue spot on top edge; one tab or glue spot on the edge of the flap. Position the top tab or glue spot near the end of the flap. Position the tab or glue spot on the edge of the flap in the center. Or use continuous glue line to seal the entire open edge (flap).
	On the bottom (longer) edge, with no other folds	5" to 10.5" long	70-pound	Two 1" non-perforated tabs or continuous glue line	One tab on leading edge; one tab on trailing edge. Position the tabs no more than 1 inch from top edge. Or use continuous glue line to seal the entire

				top edge.
	On the bottom (longer) edge, with an intermediate fold on the top edge (Tri-Fold)	5" to 10.5" long	50-pound for 8.5" x 11" sheets folded to 3.66" x 8.5" 70-pound for all others	Two 1" non-perforated tabs or continuous glue line	One tab on leading edge; one tab on trailing edge. Position the tabs no more than 1 inch from top edge. Or use continuous glue line to seal the entire top edge.
	On the bottom (longer) edge, with an intermediate fold on the top edge. (4-panel folded)	5" to 10.5" long	70-pound	Two 1" non-perforated tabs or continuous glue line	One tab on leading edge; one tab on trailing edge. Position the tabs no more than 1 inch from top edge. Or use continuous glue line to seal the entire top edge.
	On the top (longer) edge, with a first fold on the bottom (longer) edge	5" to 10.5" long	70-pound	Two 1" non-perforated tabs or continuous glue line	Two tabs on the edge of the flap. Position the tabs no more than 1 inch from the left and right edge. Or use continuous glue line to seal along edge of the flap.
	On the bottom (longer) edge, with a first fold on the leading (shorter) edge	7" to 10.5" long	50-pound	Two 1" non-perforated tabs	One tab on leading edge; one tab on trailing edge. Position the tabs no more than 1 inch from top edge.
	On the bottom (longer) edge, with intermediate folds on the leading (shorter) edge and the top (longer) edge	7" to 10.5" long	50-pound	Two 1" non-perforated tabs	One tab on leading edge; one tab on trailing edge. Position the tabs no more than 1 inch from top edge.

[Renumber current 3.14.2 as new 3.16 and revise as follows:]

3.16 Booklets

3.16.1 Definition

Booklets are multiple sheets of paper. Multiple sheets may be folded together to form a letter-sized booklet. Booklets may be perfect bound or permanently fastened with staples or another method that creates a uniformly thick mailpiece. Bound booklets may be folded for mailing if the final mailpiece remains uniform in thickness.

3.16.2 Paper

Booklet covers generally must be made with a minimum paper basis weight of 60-pounds or equivalent. Minimum basis weights are higher for some designs (see 3.16.4).

3.16.3 Physical Standards for Booklets

Booklets must meet the following standards:

a. Height: not more than 6 inches or less than 3.5 inches high.

b. Length: not more than 10.5 inches or less than 5 inches long.

c. Thickness: not more than 0.25 inches or less than 0.009 inches thick.

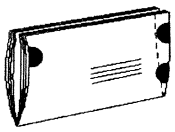
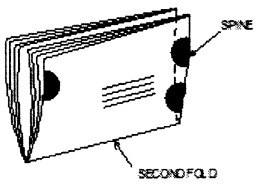
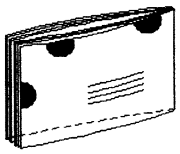
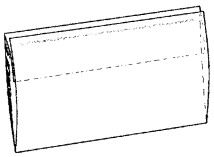
d. Weight: not more than 3 ounces.

e. Aspect ratio: within 1.3 to 2.5 (see 201.3.1).

3.16.4 Booklet Design and Sealing

Booklets may be designed with the spine or fold at the bottom or on the leading edge and applicable sealing (see exhibit 3.16.4).

Exhibit 3.16.4 Booklet Design

If the spine or final fold is...		And the length is...	The cover stock must be at least...	Mailers must seal the piece with...	And place the tabs in these locations...
	Spine or fold on the bottom (longer) edge	5" to 9" long	50-pound	Three 1.5" non-perforated tabs	Two tabs on leading edge; one tab on trailing edge. Position lower leading tab 0.5 inch from the bottom edge. Position upper tabs 1 inch from the top edge.
		Over 9", up to 10.5" long	60-pound		
	Final fold on the bottom (longer) edge, with the folded spine on the leading or trailing (shorter) edge	5" to 10.5" long	40-pound	Three 1.5" non-perforated tabs	Two tabs on leading edge; one tab on trailing edge. Position lower leading tab 0.5 inch from the bottom edge. Position upper tabs 1 inch from the top edge.
	Spine on the leading (shorter) edge	5" to 9" long	60-pound	Three 1.5" non-perforated tabs	Two tabs on top edge; one tab on trailing edge. Position top tabs 1 inch from left and right edge. Position trailing tab in the middle.
		Over 9", up to 10.5" long	70-pound		
	Spine on bottom (longer) edge, non-perforated inner flap on top (upper) edge	5" to 9" long	80-pound	Continuous glue line or glue spots	Perfect bound or saddle stitched with a continuous glue line along flap preferred, minimum 1inch glue spots acceptable if placed within ¾ inch of right and left edges.

[Renumber current 3.14.3 as new 3.17.]

[Renumber current 3.14.4 as new 3.7.]

[Renumber current 3.15 as new 3.18.]

* * * * *

We will publish an appropriate amendment to 39 CFR 111 if our proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E8–30752 Filed 12–24–08; 8:45 am]

BILLING CODE 7710–12–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0389; FRL–8752–9]

Approval of Air Quality Implementation Plans; Oklahoma; Recodification of Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve portions of revisions to the Oklahoma State Implementation Plan (SIP) submitted on February 14, 2002. Most of the revisions are administrative in nature and modify redundant or incorrect text within the SIP. The revisions also include renumbered or recodified portions of the SIP and new sections that incorporate Federal rules. We are approving the revisions in accordance with the requirements of section 110 of the Clean Air Act (the Act) and EPA's regulations.

DATES: Written comments must be received on or before January 28, 2009.

ADDRESSES: Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Emad Shahin, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6717; fax number 214–665–7263; e-mail address *shahin.emad@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule, which is located in the rules section of this **Federal Register**.

Dated: November 25, 2008.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. E8–29978 Filed 12–24–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2701; MB Docket No. 08–244; RM–11507]

Television Broadcasting Services; Scranton, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by MPS Media of Scranton License, LLC (''MPS Media''), the licensee of station WSWB–DT, pre-transition DTV channel 31, Scranton, Pennsylvania. MPS Media has been assigned DTV channel 38 for post-transition use and now requests the substitution of its pre-transition DTV channel 31 for DTV channel 38 at Scranton.

DATES: Comments must be filed on or before January 28, 2009, and reply comments on or before February 12, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Joseph M. Di Scipio, Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: David Brown, *david.brown@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–244, adopted December 9, 2008, and released December 12, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Pennsylvania, is amended by adding DTV channel 31 and removing DTV channel 38 at Scranton.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–30695 Filed 12–24–08; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 73, No. 249
Monday, December 29, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–ST–08–0103]

Notice of Request for Revision of a Currently Approved Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from Office of Management and Budget (OMB) for an extension of and revision to the currently approved information collection ''Application for Plant Variety Protection Certification and Objective Description of Variety.'' Two new forms are introduced to this collection.

DATES: Comments on this notice must be received by February 27, 2009. All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet via *http://www.regulations.gov.*

ADDITIONAL INFORMATION OR COMMENTS: Contact Bernadette Thomas, Information Technology Specialist, Plant Variety Protection Office (PVPO), Science and Technology, AMS, Room 401, National Agricultural Library (NAL), 10301 Baltimore Avenue, Beltsville, MD 20705; Telephone (301) 504–5297 and Fax (301) 504–5291.

SUPPLEMENTARY INFORMATION: *Title:* Regulations Governing the Application for Plant Variety Protection Certificate and Reporting Requirements under the Plant Variety Protection Act.

OMB Number: 0581–0055.

Expiration Date of Approval: June 30, 2009.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Plant Variety Protection Act (PVPA) (7 U.S.C. 2321 *et seq.*) was established ''To encourage the development of novel varieties of sexually reproduced plants and make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promote progress in agriculture in the public interest.''

The PVPA is a voluntary user funded program which grants intellectual property rights protection to breeders of new, distinct, uniform, and stable seed reproduced and tuber propagated plant varieties. To obtain these rights the applicant must provide information which shows the variety is eligible for protection and that it is indeed new, distinct, uniform, and stable as the law requires. Application forms, descriptive forms, and ownership forms are furnished to applicants to identify the information which is required to be furnished by the applicant in order to legally issue a certificate of protection (ownership). The certificate is based on claims of the breeder and cannot be issued on the basis of reports in publications not submitted by the applicant. Regulations implementing the PVPA appear at 7 CFR Part 92.

Form ST–470, Application for Plant Variety Protection Certificate, Form ST–470 series, Objective Description of Variety (Exhibit C to Form ST–470P), and Form ST–470–E, Statement of Basis of Applicant's Ownership, are the basis by which the determination, by experts at PVPO, is made as to whether a new, distinct, uniform, and stable seed reproduced or tuber-propagated variety in fact exists and is entitled to protection.

The application form would be revised slightly to clarify that applicants may specify not only that the variety be sold only as a class of certified seed (Foundation, Registered, or Certified) but that the applicant may specify a limitation on the number of generations within each class. The information received on applications, with certain exceptions, is required by law to remain confidential until the certificate is issued (7 U.S.C. 2426).

The information collection requirements in this request are essential to carry out the intent of the PVPA, to provide applicants with certificates of protection, to provide the respondents the type of service they request, and to administer the program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .75 hours per response.

Respondents: Businesses or other for-profit, not-for-profit institutions, and Federal Government.

Estimated Number of Respondents: 98.

Estimated Number of Responses per Respondent: 29.

Estimated Total Annual Burden on Respondents: 2,080.

Two new forms will be introduced into this collection. Information concerning these new forms is listed below.

Title: Form ST–470–20b: Objective Description of Variety—Cucurbita spp. not pepo's.

Expiration Date of Approval: Three years from date of OMB approval.

Abstract: This form was created to collect information on varieties of Cucurbita spp. not pepo's. The previous form ST–470–20 collected descriptions of any species of cucurbit but was designed with winter squashes, such as pumpkins, in mind.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .2857 hours per response.

Respondents: PVP applicants.

Title: Form ST–470–104: Objective Description of Variety—Mustard.

Expiration Date of Approval: Three years from date of OMB approval.

Abstract: This form was created in response to an applicant's request. Previous applicants used the rapeseed form which was used as a basis for this new form.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .2142 hours per response.

Respondents: PVP applicants.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the

methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Bernadette Thomas, Information Technology Specialist, Plant Variety Protection Office, Room 401, NAL Building, 10301 Baltimore Avenue, Beltsville, MD 20705. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: December 19, 2008.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–30696 Filed 12–24–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Applications for the Rural Economic Development Loan and Grant Program for Fiscal Year 2009

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: This Notice is to invite applications for loans and grants under the Rural Economic Development Loan and Grant (REDLG) program pursuant to 7 CFR part 4280, subpart A for fiscal year (FY) 2009 subject to the availability of funding. Funding to support $35.8 million in loans and $10 million in grants is currently available. The commitment of program dollars will be made to applicants of selected responses that have fulfilled the necessary requirements for obligation. Expenses incurred in developing applications will be at the applicant's risk.

ADDRESSES: For further information, entities wishing to apply for assistance should contact a Rural Development State Office to receive further information and copies of the application package. Submit applications to the USDA Rural Development State Office in the state where your project is located. A list of the USDA Rural Development State Offices addresses and telephone numbers are as follows:

District of Columbia

USDA Rural Development, Specialty Lenders Division, 1400 Independence Avenue, SW., STOP 3225, Room 6867, Washington, DC 20250–3225, (202) 720–1400.

Alabama

USDA Rural Development State Office, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400/TDD (334) 279–3495.

Alaska

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7705/TDD (907) 761–8905.

Arizona

USDA Rural Development State Office, 230 N. 1st Ave., Suite 206, Phoenix, AZ 85003, (602) 280–8701/TDD (602) 280–8705.

Arkansas

USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200/TDD (501) 301–3279.

California

USDA Rural Development State Office, 430 G Street, # 4169, Davis, CA 95616–4169, (530) 792–5800/TDD (530) 792–5848.

Colorado

USDA Rural Development State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (720) 544–2903/TDD (720) 544–2976.

Delaware-Maryland

USDA Rural Development State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580/TDD (302) 857–3585.

Florida/Virgin Islands

USDA Rural Development State Office, 4440 NW 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3400/TDD (352) 338–3499.

Georgia

USDA Rural Development State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162/TDD (706) 546–2034.

Hawaii

USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380/TDD (808) 933–8321.

Idaho

USDA Rural Development State Office, 9173 West Barnes Dr., Suite A1, Boise, ID 83709, (208) 378–5600/TDD (208) 378–5644.

Illinois

USDA Rural Development State Office, 2118 W. Park Court, Suite A, Champaign, IL 61821, (217) 403–6200/TDD (217) 403–6240.

Indiana

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100/TDD (317) 290–3343.

Iowa

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663/TDD (515) 284–4858.

Kansas

USDA Rural Development State Office, 1303 S.W. First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2700/TDD (785) 271–2767.

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300/TDD (859) 224–7422.

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7921/TDD (318) 473–7655.

Maine

USDA Rural Development State Office, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9160/TDD (207) 942–7331.

Massachusetts/Rhode Island/Connecticut

USDA Rural Development State Office, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4300/TDD (413) 253–4590.

Michigan

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5190/TDD (517) 324–5169.

Minnesota

USDA Rural Development State Office, 375 Jackson Street, Suite 410, St. Paul, MN 55101–1853, (651) 602–7800/TDD (651) 602–3799.

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4316/TDD (601) 965–5850.

Missouri

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976/TDD (573) 876–9480.

Montana

USDA Rural Development State Office, 900 Technology Boulevard, Suite B, P.O. Box 850, Bozeman, MT 59771, (406) 585–2580/TDD (406) 585–2562.

Nebraska

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE 68508, (402) 437–5551/TDD (402) 437–5093.

Nevada

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV

89703–5146, (775) 887–1222/TDD (775) 885–0633.

New Jersey

USDA Rural Development State Office, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7700/TDD (856) 787–7784.

New Mexico

USDA Rural Development State Office, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4950/TDD (505) 761–4938.

New York

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400/TDD (315) 477–6447.

North Carolina

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000/TDD (919) 873–2003.

North Dakota

USDA Rural Development State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2037/TDD (701) 530–2113.

Ohio

USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2400/TDD (614) 255–2554.

Oklahoma

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000/TDD (405) 742–1007.

Oregon

USDA Rural Development State Office, 1201 NE Lloyd Blvd., Suite 801, Portland, OR 97232, (503) 414–3300/TDD (503) 414–3387.

Pennsylvania

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299/TDD (717) 237–2261.

Puerto Rico

USDA Rural Development State Office, IBM Building, Suite 601, 654 Munos Rivera Avenue, San Juan, PR 00918–6106, (787) 766–5095/TDD (787) 766–5332.

South Carolina

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163/TDD (803) 765–5697.

South Dakota

USDA Rural Development State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1100/TDD (605) 352–1147.

Tennessee

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1300.

Texas

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700/TDD (254) 742–9712.

Utah

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4320/TDD (801) 524–3309.

Vermont/New Hampshire

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000/TDD (802) 223–6365.

Virginia

USDA Rural Development State Office, 1606 Santa Rosa Road, Suite 238, Richmond, VA 23229–5014, (804) 287–1550/TDD (804) 287–1753.

Washington

USDA Rural Development State Office, 1835 Black Lake Boulevard SW., Suite B, Olympia, WA 98512–5715, (360) 704–7740/TDD (360) 704–7760.

West Virginia

USDA Rural Development State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4860/TDD (304) 284–4836.

Wisconsin

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600/TDD (715) 345–7614.

Wyoming

USDA Rural Development State Office, 100 East B, Federal Building, Room 1005, P.O. Box 11005, Casper, WY 82602–5006, (307) 233–6700/TDD (307) 233–6733.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business-Cooperative Service.

Funding Opportunity Type: Rural Economic Development Loans and Grants.

Announcement Type: Initial Announcement.

Catalog of Federal Domestic Assistance Number: 10.854.

Dates: Application Deadline: Completed applications must be received in the State Office as follows: For First Quarter, September 30, 2008, Second Quarter, December 31, 2008, Third Quarter, March 31, 2009, and Fourth Quarter, June 30, 2009.

I. Funding Opportunity Description

The Regulations for these programs are at 7 CFR part 4280, subpart A. The primary objective of the program is to promote rural economic development and job creation projects. Assistance provided to rural areas, as defined, under this program may include business startup costs, business expansion, business incubators, technical assistance feasibility studies, advanced telecommunications services and computer networks for medical, educational, and job training services and community facilities projects for economic development. Awards are made on a competitive basis using specific selection criteria contained in 7 CFR part 4280, subpart A. Information required to be in the application includes an SF–424, ''Application for Federal Assistance;'' a Resolution of the Board of Directors; AD–1047, ''Debarment/Suspension Certification;'' Assurance statement for the Uniform Act; Restrictions on Lobbying, AD 1049; ''Certification Regarding Drug-Free Workplace Requirements;'' Seismic certification (if construction); Form RD 1940–20, ''Request for Environmental Information;'' RUS Form 7; ''Financial and Statistical Report;'' and RUS Form 7a, ''Investments, Loan Guarantees, and Loans,'' or similar information; and written narrative of project description. Applications will be tentatively scored by the State Offices and submitted to the National Office for review.

Definitions

The definitions are published at 7 CFR 4280.3.

II. Award Information

Type of Awards: Loans and Grants.

Fiscal Year Funds: FY 2009.

Maximum Anticipated Award: Loans—$740,000; Grant—$300,000.

Anticipated Award Dates: First Quarter, December 15, 2008, Second Quarter, March 16, 2009, Third Quarter, June 15, 2009, and Fourth Quarter, September 15, 2009.

III. Eligibility Information

A. Eligible Applicants

Loans and grants may be made to any entity that is identified by USDA Rural Development as an eligible borrower under the Rural Electrification Act. In accordance with 7 CFR 4280.13, applicants that are not delinquent on any Federal debt or otherwise disqualified from participation in these programs are eligible to apply. An applicant must be eligible under 7 U.S.C. 940c.

B. Cost Sharing or Matching

For loans, either the Ultimate Recipient or the Intermediary must provide supplemental funds for the project equal to at least 20 percent of the loan to the Intermediary. For grants, the Intermediary must provide supplemental funds for the project equal

to at least 20 percent of the grant to the Intermediary.

C. Other Eligibility Requirements

Applications will only be accepted for projects that promote rural economic development and job creation.

D. Completeness Eligibility

Applications will not be considered for funding if they do not provide sufficient information to determine eligibility or are missing required elements.

IV. Fiscal Year 2009 Application and Submission Information

A. Address To Request Application Package

For further information, entities wishing to apply for assistance should contact the Rural Development State Office identified in this NOFA to obtain copies of the application package.

Applicants are encouraged to submit applications through the Grants.gov Web site at: *http://www.grants.gov*. Applications may be submitted in either electronic or paper format. Users of Grants.gov will be able to download a copy of the application package, complete it off line, and then upload and submit the application via the Grants.gov Web site. Applications may not be submitted by electronic mail.

- When you enter the Grants.gov Web site, you will find information about submitting an application electronically through the site as well as the hours of operation. USDA Rural Development strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov. To use Grants.gov, applicants must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number which can be obtained at no cost via a toll-free request line at 1–866–705–5711.
- You may submit all documents electronically through the Web site, including all information typically included on the application for REDLGs and all necessary assurances and certifications.
- After electronically submitting an application through the Web site, the applicant will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number.
- USDA Rural Development may request that the applicant provide original signatures on forms at a later date.
- If applicants experience technical difficulties on the closing date and are unable to meet the deadline, you may submit a paper copy of your application to your respective Rural Development State Office. Paper applications submitted to a Rural Development State Office must meet the closing date and local time deadline.

Please note that applicants must locate the downloadable application package for this program by the Catalog of Federal Domestic Assistance Number or FedGrants Funding Opportunity Number, which can be found at *http://www.grants.gov*. In accordance with the Paperwork Reduction Act of 1995, the information collection requirement contained in this Notice is approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0024.

B. Content and Form of Submission

An application must contain all of the required elements. Each selection priority criterion outlined in 7 CFR 4280.42(b), must be addressed in the application. Failure to address any of the criteria will result in a zero-point score for that criterion and will impact the overall evaluation of the application. Copies of 7 CFR part 4280, subpart A, will be provided to any interested applicant making a request to a Rural Development State Office listed in this notice.

C. Submission Dates and Times

Application Deadline Dates: First Quarter, September 30, 2008, Second Quarter, December 31, 2008, Third Quarter, March 31, 2009, and Fourth Quarter, June 30, 2009.

Explanation of Deadlines: Applications must be in the Rural Development State Office by the deadline dates as indicated above.

V. Application Review Information

The National Office will score applications based on the grant selection criteria and weights contained in 7 CFR part 4280, subpart A and will select an Intermediary subject to the Intermediary's satisfactory submission of the additional items required by 7 CFR part 4280, subpart A and the USDA Rural Development Letter of Conditions.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive notification for funding from the Rural Development State Office. Applicants must comply with all applicable statutes and regulations before the loan/grant award will be approved. Provided the application requirements have not changed, an application not selected will be reconsidered in three subsequent funding competitions for a total of four competitions. If an application is withdrawn, it can be resubmitted and will be evaluated as a new application.

B. Administrative and National Policy Requirements

Additional requirements that apply to Intermediary's selected for this program can be found in the 7 CFR part 4280, subpart A.

VII. Agency Contacts

For general questions about this announcement, please contact your Rural Development State Office identified in this NOFA.

Nondiscrimination Statement

''The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue SW., Washington, D.C. 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender.''

Dated: December 16, 2008.

Ben Anderson,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E8–30731 Filed 12–24–08; 8:45 am]

BILLING CODE 3410–XY–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Monday through Wednesday, January 12–14, 2009, at the times and location noted below.

DATES: The schedule of events is as follows:

Monday, January 12, 2009

10–11 a.m. Technical Programs Committee.

11–Noon Budget Committee.

1:30–5 p.m. Ad Hoc Committee Meetings (Closed to Public).

Tuesday, January 13, 2009

9–5 p.m. Strategic Planning Meeting (Closed to Public).

Wednesday, January 14, 2009

9–Noon Ad Hoc Committee Meetings, Contd. (Closed to Public).

1:30–3 p.m. Board Meeting.

ADDRESSES: All meetings will be held at the Embassy Suites DC Convention Center Hotel, 900 10th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice) and (202) 272–0082 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items:

- New Public Board Members; Swearing-in Ceremony
- Approval of the draft November 2008 Board Meeting Minutes
- ADA/ABA Accessibility Guidelines; Federal Agency Updates
- Technical Programs Committee Report
- Budget Committee Report
- Information and Communications Technologies Ad Hoc Committee Report
- Transportation Vehicles Ad Hoc Committee Report
- Outdoor Developed Areas Ad Hoc Committee Report
- Passenger Vessels Ad Hoc Committee Report
- Public Rights-of-Way Ad Hoc Committee Report
- Airport Terminal Access Ad Hoc Committee Report
- Accessible Design in Education Ad Hoc Committee Report
- Acoustics Ad Hoc Committee Report
- Election Assistance Commission Report

All meetings are accessible to persons with disabilities. An assistive listening system, computer assisted real-time transcription (CART), and sign language interpreters will be available at the Board meeting. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

David M. Capozzi,

Executive Director.

[FR Doc. E8–30738 Filed 12–24–08; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 70–2008]

Foreign-Trade Zone 25—Port Everglades, FL; Application for Reorganization/Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port Everglades Department of Broward County, Florida, grantee of FTZ 25, requesting authority to expand and reorganize its zone in Broward County, Florida, within the Port Everglades CBP port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 11, 2008.

FTZ 25 was approved by the Board on December 27, 1976 (Board Order 113, 42 FR 61; 1/3/77), and expanded on August 11, 1978 (Board Order 132, 43 FR 36989, 8/21/78); October 10, 1991 (Board Order 537, 56 FR 52510, 10/21/91); and, March 18, 2005 (Board Order 1382, 70 FR 15836, 3/29/05). The applicant is now requesting authority to reorganize and expand the zone, reinstate acreage previously deleted, and make permanent several temporary sites. The zone, as proposed, would consist of the following sites in Broward County, Florida:

Site 1: (142 acres total within Port Everglades)—82 acres at 3400; 50 acres at 3401; and 10 acres at 4401 McIntosh Road, Hollywood

Site 2: (14 acres total) at 2501/2525/2555/2600 Davie Road, Davie

Site 3: (69 acres total within the Miramar Commerce Park) 39 acres at 9786/9850/9900/10044 Premier Parkway; and 30 acres at 2700/2701 Executive Way and 10301/10431 N. Commerce Parkway, Miramar

Site 4: (18 acres) 2696 NW 31st Avenue, Lauderdale Lakes

Site 5: (37 acres) 2650 SW 145th Avenue, Miramar

Site 6: (26 acres) 3200 West Oakland Park Boulevard, Lauderdale Lakes

Site 7: (1 acre) 35 SW 12th Avenue, Dania Beach

Site 8: (9 acres) 2200–2300 SW 45th Street, Dania Beach

Site 9: (6 acres) 375 NW 9th Avenue, Dania Beach

Site 10: (13 acres) 3435–3699 NW 19th Street, Lauderdale Lakes

Site 11: (52 acres) 1141 South Andrews Avenue, Pompano Beach

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Claudia Hausler of the FTZ Staff is designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 27, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 16, 2009.

A copy of the application will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 200 East Las Olas Boulevard, Suite 1600, Fort Lauderdale, Florida 33301.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave., NW., Washington, DC 20230.

For further information, contact Claudia Hausler at *Claudia_Hausler@ita.doc.gov* or (202) 482–1379.

Dated: December 12, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–30850 Filed 12–24–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Firearms Convention

AGENCY: Bureau of Industry and Security.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 27, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *lhall@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection is required to implement the Firearms Convention. The first requirement is for U.S. exporters to acquire an Import Certificate from the government of the importing country. The U.S. exporter provides the certificate number to BIS and retains the certificate in company records. The Import Certificate is essential to the prevention of the spread of illicit firearms. The second requirement is the imposition of a licensing requirement for Firearms Convention items destined to Canada, a Convention Signatory. Previously, U.S. exporters exported such items to Canada without a license. The United States already required a license for the export of such items to the other Convention Signatories.

II. Method of Collection

Submitted electronically or in paper form.

III. Data

OMB Control Number: 0694–0114.
Form Number(s): None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 1,238.
Estimated Time Per Response: 30 minutes per response.
Estimated Total Annual Burden Hours: 619 hours.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 19, 2008.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–30708 Filed 12–24–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–886]

Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Polyethylene Retail Carrier Bags From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 29, 2008.

FOR FURTHER INFORMATION CONTACT: Kristin Case, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3174.

Background

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene retail carrier bags from the People's Republic of China. On September 9, 2008, the Department published the preliminary results of review. See *Polyethylene Retail Carrier Bags From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 52282 (September 9, 2008). The period of review is August 1, 2006, through July 31, 2007.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a final determination in an administrative review of an antidumping duty order within 120 days after the date on which the preliminary results are published in the **Federal Register**. If it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final determination to 180 days after the preliminary determination.

We determine that it is not practicable to complete the final results of this review by the current deadline of January 7, 2009. We require additional time to evaluate complex issues the parties have raised concerning the calculation of surrogate financial ratios. Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we are extending the time period for issuing the final results of this review by 28 days to February 4, 2009.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: December 18, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E8–30854 Filed 12–24–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–821–819

Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Magnesium Metal from the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: December 29, 2008.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3477.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published an antidumping

duty order on magnesium metal from the Russian Federation on April 15, 2005. See *Notice of Antidumping Duty Order: Magnesium Metal from the Russian Federation*, 70 FR 19930 (April 15, 2005). On April 30, 2008, PSC VSMPO–AVISMA Corporation, a Russian Federation producer of the subject merchandise, requested that the Department conduct an administrative review. On April 30, 2008, U.S. Magnesium Corporation LLC, the petitioner in this proceeding, also requested that the Department conduct an administrative review with respect to PSC VSMPO–AVISMA Corporation and Solikamsk Magnesium Works (SMW), another Russian Federation producer of the subject merchandise. On June 4, 2008, the Department published a notice of initiation of an administrative review of the antidumping duty order on magnesium metal from the Russian Federation for the period April 1, 2007, through March 31, 2008. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 31813 (June 4, 2008). The preliminary results of this administrative review are currently due no later than December 31, 2008.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published in the **Federal Register**. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of this review by the current deadline of December 31, 2008. We require additional time to analyze a number of complex cost–accounting and corporate affiliation issues relating to this administrative review.

Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we are extending the time period for issuing the preliminary results of this review by 90 days to March 31, 2009.

This notice is published in accordance with sections 751(a)(3)(A) and 777 (i)(1) of the Act.

Dated: December 18, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E8–30863 Filed 12–24–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–928]

Uncovered Innerspring Units From the People's Republic of China: Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 29, 2008.

SUMMARY: The Department of Commerce (''Department'') has determined that uncovered innerspring units (''innersprings'') from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV'') as provided in section 735 of the Tariff Act of 1930, as amended (''Act''). The final dumping margins for this investigation are listed in the ''Final Determination Margins'' section below.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit or Paul Walker, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4031 or (202) 482–0413, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On August 6, 2008, the Department published in the **Federal Register** its preliminary determination that innersprings from the PRC are being, or are likely to be, sold in the United States at LTFV. *See Uncovered Innerspring Units from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 45729 (August 6, 2008) (''*Preliminary Determination*''). The Department conducted a verification of Foshan Jingxin Steel Wire & Spring Co., Ltd. (''Foshan Jingxin'') from September 22–26, 2008.[1] In accordance with 19 CFR 351.309(c)(i), we invited parties to comment on our *Preliminary Determination.* The Department received a case brief from Petitioner.[2] No other party submitted case or rebuttal briefs. In addition, on December 2, 2008, we placed new factual information on the record regarding Foshan Jingxin's affiliate Foshan Ruixin Non-Woven Co., Ltd. (''Ruixin'').[3] On December 8, 2008, we received comments on the new factual information from both Foshan Jingxin and Petitioner.[4] No hearings were requested or held for this investigation.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by the parties to this investigation are addressed in the ''Uncovered Innerspring Units from the People's Republic of China: Issues and Decision Memorandum for the Final Determination of Sales at Less than Fair Value,'' dated concurrently with this notice, which is hereby adopted by this notice in its entirety (''Issues and Decision Memorandum''). A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit in the main Commerce building, Room 1117, and is accessible on the Web at *http://www.trade.gov/ia.* The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Period of Investigation

The period of investigation (''POI'') is April 1, 2007, through September 30, 2007.

Scope of Investigation

The merchandise covered by this investigation is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.*, twin, twin long, full, full long, queen, California king, and king) and units used in smaller constructions, such as crib and youth mattresses. All uncovered innerspring

[1] *See* Memorandum to the File from Erin Begnal, Senior Case Analyst, and Susan Pulongbarit, Case Analyst, through Scot Fullerton, Program Manager, ''Verification of the Sales and Factors of Production Response of Foshan Jingxin Steel Wire & Spring Co., Ltd. in the Antidumping Duty Investigation of Uncovered Innerspring Units from the People's Republic of China,'' dated November 4, 2008 (''Foshan Jingxin Verification Report'').

[2] Leggett & Platt, Incorporated, hereafter known as ''Petitioner''.

[3] *See* the Department's letter dated December 2, 2008.

[4] *See* Letter from Garvey Schubert Barer to Secretary of Commerce, Response to the Department Letter Dated December 3, 2008 (December 8, 2008) and Letter from White & Case LLP to Secretary of Commerce, Petitioner Supplementary Information Response (December 8, 2008).

units are included in this scope regardless of width and length. Included within this definition are innersprings typically ranging from 30.5 inches to 76 inches in width and 68 inches to 84 inches in length. Innersprings for crib mattresses typically range from 25 inches to 27 inches in width and 50 inches to 52 inches in length.

Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring.

Pocketed and non-pocketed innerspring units are included in this definition. Non-pocketed innersprings are typically joined together with helical wire and border rods. Non-pocketed innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils covered by a ''pocket'' or ''sock'' of a nonwoven synthetic material or woven material and then glued together in a linear fashion.

Uncovered innersprings are classified under subheading 9404.29.9010 and have also been classified under subheadings 9404.10.0000, 7326.20.0070, 7320.20.5010, or 7320.90.5010 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of this investigation is dispositive.

Scope-Clarification Request

Caye Home Furnishings LLC (Caye Furnishings), a U.S. manufacturer of living room furniture, requested that we clarify the scope language of the antidumping duty investigations on uncovered innerspring units from the PRC, South Africa, and the Socialist Republic of Vietnam. *See* August 25, 2008, letter from Caye Furnishings. Specifically, Caye Furnishings requested that we modify the scope of the investigations to exclude springs and individually wrapped pocket coils for upholstery seating that are not suitable for mattresses or mattress supports.

Caye Furnishings asserted that the reference to mattresses in the scope language makes clear that Petitioner intended to cover innersprings that are used in the manufacture of innerspring mattresses and did not intend to cover innersprings that are not suitable for use in mattresses or mattress supports. Caye Furnishings asserted that innersprings and individually wrapped pocket coils that it imports for use in upholstery seating in the manufacture of living room furniture are not suitable for mattresses or mattress supports. Caye Furnishings also explained that, although the products it imports are normally classified under subheading 7320.20.5020 of the HTSUS, which is not one of the HTSUS subheadings covered by the scope of the investigations, the scope description as written could result in the treatment of its imports as subject merchandise.

In its September 11, 2008, comments on the issue, Petitioner stated that it believes the scope language is clear and that the merchandise described by Caye Furnishings is outside the scope of the investigations. Petitioner stated, however, that it does not object to the clarification of the scope for the reasons Caye Furnishings cited. *See* Memorandum to the File from Dmitry Vladamirov, Case Analyst, Re: Less-Than-Fair Value Investigations of Uncovered Innerspring Units from the PRC, South Africa, and the Socialist Republic of Vietnam, dated September 16, 2008. In its September 17, 2008, comments responding to the alternative versions of the scope-clarification language that we proposed, Petitioner stated that it does not object to amending the scope description of the investigations by excluding individual springs and individually wrapped pocket coils for upholstery seating (Petitioner stated that it objects to the proposed language which excludes any mention of end-use of the merchandise).

We have considered the various alternatives on the record for modifications of the scope language. In addition to the difficulties associated with administering antidumping duty orders with end-use as a basis for whether certain products may be considered subject merchandise, we agree with Petitioner that the merchandise Caye Furnishings described in its request is not within the scope of the investigations. Therefore, we have not modified the scope language as suggested by any of the parties.

Changes Since the Preliminary Determination

Based on our findings at verification, and additional information placed on the record of this investigation, we have made changes since the *Preliminary Determination.* As further discussed below, we have determined to apply total adverse facts available (''AFA'') to Foshan Jingxin for purposes of this final determination. *See* Issues and Decision Memorandum at Comment 1.

Adverse Facts Available

Section 776(a)(2) of the Act provides that the Department shall apply ''facts otherwise available'' if, *inter alia,* an interested party or any other person (A) Withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act provides further that the Department may use an adverse inference when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

Pursuant to sections 776(a)(2)(A), (C) and (D) of the Act, we are applying facts otherwise available to Foshan Jingxin because it withheld certain information that was specifically requested by the Department and significantly impeded the proceeding by not providing accurate or complete responses to the Department's questions regarding the activities of its majority-owned affiliate, Ruixin, in the production of the merchandise under consideration and sale of subject merchandise to the United States. Additionally, because information discovered at verification directly contradicted information contained in Foshan Jingxin's questionnaire responses, the Department was unable to verify certain statements in Foshan Jingxin's questionnaire responses. *See* Foshan Jingxin Verification Report.

Furthermore, based on the record evidence and pursuant to section 776(b) of the Act, the Department has determined that Foshan Jingxin did not cooperate to the best of its ability to comply with the Department's requests for information. Specifically, the Department explained the nature of information on affiliates that it required in the investigation, gave Foshan Jinxing numerous opportunities to provide such information, received only denials from Foshan Jingxin that Ruixin was involved in the sale or production of the merchandise under consideration, discovered only at verification that Ruixin was in fact involved in the production of the merchandise under consideration, discovered after verification that Ruixin was involved in the sale of subject merchandise, and found that Foshan Jingxin, though its general manager, possessed this information throughout the investigation, yet failed to report it.

Therefore, in accordance with section 776(b) of the Act, we have applied total AFA to Foshan Jinxing. Accordingly, Foshan Jingxin will be assigned the PRC-wide rate as total AFA. For a complete analysis of comments received on this issue, see Issues and Decision Memorandum at Comment 1.

Surrogate Country

In the *Preliminary Determination,* we stated that we had selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) It is a significant producer of comparable merchandise; (2) it is at a level of economic development comparable to that of the PRC; and (3) we have reliable data from India that we can use to value FOPs. *See Preliminary Determination.* We received no comments on our surrogate country selection. Accordingly, for the final determination, we made no changes to our finding with respect to the selection of India as a surrogate country.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20589 (May 6, 1991), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR at 22585, 22587 (May 2, 1994), and 19 CFR 351.107(d).

In the *Preliminary Determination,* we found that the following separate rate applicants demonstrated their eligibility for separate-rate status: Zibo Senbao Furniture Co., Ltd., Hebei Yililan Furniture Co., Ltd., Xilinmen Group Co., Ltd., East Grace Corporation, Nanjing Meihua I&E Trade Co., Ltd., and Zhejiang Sanmen Herod Mattress Co., Ltd. (collectively ''SR applicants'').

No party has commented on the eligibility of these companies for separate-rate status. For the final determination, we continue to find that the evidence placed on the record of this investigation by these companies demonstrates both a *de jure* and *de facto* absence of government control with respect to their respective exports of the merchandise under investigation. Thus, we continue to find that they are eligible for separate rate status. Normally the separate rate is determined based on the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding *de minimis* margins or margins based entirely on AFA. *See* section 735(c)(5)(A) of the Act.

We determined in the *Preliminary Determination* that Jiangsu Soho Technology Trading Co., Ltd. (''Soho Tech.'') is not entitled to a separate rate. We received no comments on this denial of a separate rate and, for the final determination, continue to find that Soho Tech. is not entitled to a separate rate.

In the *Preliminary Determination,* we determined that Foshan Jingxin was eligible for a separate rate because it demonstrated an absence of *de jure* and *de facto* government control. At verification we found no discrepancies in Foshan Jingxin's responses to the Department's separate rate questions. Consequently, for the final determination we continue to find that the evidence placed on the record of this investigation by Foshan Jingxin demonstrates it is eligible for a separate rate. In past cases where a respondent company satisfies the separate-rates test, but fails to participate to the best of its ability in other aspects of the antidumping proceeding, resulting in the application of AFA, the Department may assign the AFA rate as a separate rate for that company. *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China,* 72 FR 52355 (September 13, 2007) and accompanying Issues and Decision Memorandum at Comment 2. Thus, for this final determination, the Department has assigned the AFA rate of 234.51 percent to Foshan Jingxin as its separate rate.

In the *Preliminary Determination,* the Department assigned a separate rate to six exporter/producer combinations that qualified for a separate rate using a weighted-average margin based on the experience of the mandatory respondents and excluding any *de minimis* or zero rates or rates based on total AFA. *See Preliminary Determination.* In light of the application of AFA for both mandatory respondents, this methodology is no longer appropriate. In cases where the estimated weighted-average margins for all individually investigated respondents are zero, *de minimis*, or based entirely on AFA, the Department may use any reasonable method to assign the separate rate. *See* section 735(c)(5)(B) of the Act. In this case, where there are no mandatory respondents receiving a calculated rate and the PRC-wide entity's rate is based upon total AFA, we find that applying the simple average of the rates alleged in the petition is both reasonable and reliable for purposes of establishing a separate rate. *See, e.g., Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China,* 73 FR 6479 (February 4, 2008) and accompanying Issues and Decision Memorandum at Comment 2; *see also Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China,* 73 FR 31970 (June 5, 2008) (''*Steel Pipe Final*'') and accompanying Issues and Decision Memorandum at Comment 7. Therefore, the Department will assign a separate rate to the six exporter/producer combinations using the simple average of the margins alleged in the petition, pursuant to its practice. This rate is corroborated, to the extent practicable, for the reasons stated below. *See* ''Corroboration'' section below.

The PRC-Wide Rate

In the *Preliminary Determination,* the Department found that certain companies did not respond to our requests for information. *See Preliminary Determination,* 73 FR at 45734. In the *Preliminary Determination* we treated these PRC producers/exporters as part of the PRC-wide entity because they did not demonstrate that they operate free of government control over their export activities. In addition, in the *Preliminary Determination* we determined that High Hope Int'l Group Jiangsu Native Produce Imp. & Exp. Corp. Ltd. would be treated as part of the PRC-wide entity due to its withdrawal from the investigation and, thus, its failure to demonstrate eligibility for a separate rate. Further, in the *Preliminary Determination,* the Department found that Jiangsu Soho International Group Holding Co., Ltd. (''Jiangsu Soho'') was not eligible for a separate rate and, for the final determination, we are treating Jiangsu Soho as part of the PRC-wide entity. No additional information was placed on the record with respect to any of these companies after the *Preliminary Determination.* Therefore, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find that the use of facts available is appropriate to determine the PRC-wide rate.

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000). *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316, vol. 1, at 870 (1994) (''SAA''). We determined that, because the PRC-wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate for the PRC-wide entity.

Because we begin with the presumption that all companies within an NME country are subject to government control and because only the companies listed under the ''Final Determination Margins'' section below have overcome that presumption, we are applying a single antidumping rate (*i.e.*, the PRC-wide entity rate) to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. *See, e.g., Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value,* 65 FR 25706 (May 3, 2000). The PRC-wide entity rate applies to all entries of subject merchandise except for entries from the respondents which are listed in the ''Final Determination Margins'' section below.

In the *Preliminary Determination,* we assigned to the PRC-wide entity the highest rate calculated from the petition, 234.51 percent. *See Preliminary Determination,* 73 FR at 45735. We received no comments on this rate. Therefore, for the final determination, we have continued to assign to the PRC-wide entity the rate of 234.51 percent.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We have interpreted ''corroborate'' to mean that we will, to the extent practicable, examine the reliability and relevance of the information submitted. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil,* 65 FR 5554, 5568 (February 4, 2000); *see, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

Because there are no cooperating mandatory respondents to corroborate the 234.51 percent margin used as AFA for the PRC-wide entity, we relied upon our pre-initiation analysis of the adequacy and accuracy of the information in the petition. *See Antidumping Investigation Initiation Checklist: Uncovered Innersprings from the People's Republic of China* (January 22, 2008). During the initiation stage, we examined evidence supporting the calculations in the petition and the supplemental information provided by Petitioners to determine the probative value of the margins alleged in the petition. During our pre-initiation analysis, we examined the information used as the basis of export price and normal value (''NV'') in the petition, and the calculations used to derive the alleged margins. Also during our pre-initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition, which corroborated key elements of the export price and NV calculations. *Id.* We received no comments as to the relevance or probative value of this information. In past cases where there were no cooperating mandatory respondents with which to corroborate the margin used as AFA, the Department relied upon our pre-initiation analysis of the adequacy and accuracy of the information in the petition. *See Steel Pipe Final,* 73 FR at 31972. Therefore, for the final determination, the Department finds that the rates derived from the petition for purposes of initiation have probative value for the purpose of being selected as the AFA rate assigned to the PRC-wide entity.

Combination Rates

In the *Preliminary Determination,* the Department stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation. *See Preliminary Determination,* 73 FR at 45737. This change in practice is described in Policy Bulletin 05.1, available at *http://ia.ita.doc.gov/.* Policy Bulletin 05.1, states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

See Policy Bulletin 05.1, ''Separate Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries.''

Final Determination Margins

We determine that the following percentage weighted-average margins exist for the POI:

Exporter	Producer	Weighted-average margin (percent)
Anshan Yuhua Industrial Trade Co., Ltd	Anshan Yuhua Industrial Trade Co., Ltd	164.75
East Grace Corporation	Wuxi Xihuisheng Commercial Co., Ltd	164.75
Foshan Jingxin Steel Wire & Spring Co., Ltd	Foshan Jingxin Steel Wire & Spring Co., Ltd	234.51
Hebei Yililan Furniture Co., Ltd	Hebei Yililan Furniture Co., Ltd	164.75

Exporter	Producer	Weighted-average margin (percent)
Nanjing Meihua Import & Export Trade Co., Ltd	Nanjing Dongdai Furniture Co., Ltd	164.75
Xilinmen Group Co., Ltd	Xilinmen Furniture Co., Ltd	164.75
Zhejiang Sanmen Herod Mattress Co., Ltd	Zhejiang Sanmen Herod Mattress Co., Ltd	164.75
Zibo Senbao Furniture Co., Ltd	Zibo Senbao Furniture Co., Ltd	164.75
PRC-wide (including High Hope Int'l Group Jiangsu Native Produce Imp. & Exp. Corp. Ltd. and Jiangsu Soho International Group Holding Co., Ltd.).		234.51

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

We will instruct U.S. Customs and Border Protection (''CBP'') to continue the suspension of liquidation required by section 735(c)(1)(B) of the Act, of all entries of subject merchandise from Foshan Jingxin, the SR Applicants and the PRC-wide entity entered, or withdrawn from warehouse, for consumption on or after August 6, 2008, the date of publication of the *Preliminary Determination.* CBP shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the NV exceeds the U.S. price as shown above. *See* section 735(c)(1)(B)(ii) of the Act. The suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 19, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

Comment 1: Application of Facts Available for
A. Unreported Affiliate.
B. Unreported Factors of Production.
Comment 2: *Bona Fide* Analysis of Foshan Jingxin's Sales.
Comment 3: Surrogate Financial Ratios.
Comment 4: Calculation of the Scrap Surrogate Value.

[FR Doc. E8–30852 Filed 12–24–08; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Gulf of Mexico Electronic Logbook Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 27, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jason Rueter, (727) 824–5350 or *Jason.Rueter@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Gulf of Mexico Fishery Management Council (Council) to prepare and amend fishery management plans for any fishery in waters under its jurisdiction. National Marine Fisheries Service (NMFS) manages the shrimp fishery in the waters of the Gulf of Mexico under the Shrimp Fishery Management Plan (FMP). Regulations implementing the FMP appear at 50 CFR part 680: regulations at 50 CFR part 697 and subpart H of 50 CFR part 600 also pertain. The corresponding regulations established a mandatory electronic logbook (ELB) program, collecting location and fishing effort data, in addition to the standard logbooks completed by the fishermen (OMB Control No. 0648–0016).

There are currently approximately 2,500 permitted vessels that harvest shrimp from the Exclusive Economic Zone (EEZ), and the Council estimates that there are over 13,000 boats that fish in state waters. With such a large number of vessels of differing sizes, gears used, and fishing capabilities compounded by seasonal variability in abundance and price and the broad

geographic distribution of the fleet, it is practically impossible to estimate the actual amount of fishing effort using current methods and data. The only practical way of improving the estimates of the amount and type of bycatch is by having a more precise means of estimating effort as the ELB provides.

The currently approved reporting requirements are being renewed without change.

II. Method of Collection

The electronic logbook autonomously collects effort data and is downloaded by NMFS personnel every 2–3 months. The electronic logbook will be removed from the vessel and downloaded at NMFS lab in Galveston, Texas. A new logbook will replace the removed logbook, a process taking less than one minute.

III. Data

OMB Control Number: 0648–0543.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 250.
Estimated Time per Response: ELB installation, 30 minutes; ELB removal 1 minute.
Estimated Total Annual Burden Hours: 150.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 19, 2008.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–30704 Filed 12–24–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 0809261277–81614–02; I.D. GF001]

Cooperative Institute for Satellite Climate Studies

AGENCY: National Environmental Satellite Data and Information Service Program Office (NESDISPO), National Environmental Satellite Data and Information Service (NESDIS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of rescission and of revised funding availability.

SUMMARY: On October 7, 2008, the National Environmental Satellite Data and Information Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce (hereinafter, ''NESDIS'') published a notice of availability of funds (Docket No. 0809261277–81278–01, I.D. GF001) to establish a NOAA Cooperative Institute for Satellite Climate Studies (73 FR 58560). That notice is hereby rescinded and is replaced with the following revised notice of funding availability.

NESDIS invites applications for a Cooperative Institute (CI) that will focus on (1) climate and satellite research and applications, (2) climate and satellite observations and monitoring, and (3) climate research and modeling. Through this competition, NOAA intends to establish competitively a new CI according to the policy and procedures described in NOAA Administrative Order 216–107 and the Cooperative Institute Interim Handbook both available at *www.nrc.noaa.gov/ci.* The proposed CI should be composed of two or more member institutions (e.g., multiple universities). At least one research institution should be in Maryland, Washington DC or the adjacent states (Delaware, Pennsylvania, West Virginia and Virginia). At least one research institution should be in North Carolina or the bordering states (Tennessee, South Carolina and Georgia) and have a presence in Asheville, North Carolina. NOAA has identified three research themes that will address specific needs within the NOAA Mission Support Satellite Service program and the NOAA Climate Goal that would benefit from collaborations with the CI. The CI should possess outstanding capabilities to work in the three research themes summarized below, as well as possess the capability to conduct outreach and education activities in support of these research themes. I. Climate and Satellite Research and Applications: Research conducted under this theme is associated with the development of new and innovative uses of non-NOAA satellite assets that can ultimately be transitioned into NOAA operations to support climate information needs. This theme also includes performing research and development aimed at improving the utilization of a long time series of satellite measurements that will offer NOAA scientists a homogeneous record of satellite radiances. II. Climate and Satellite Observations and Monitoring: Research conducted under this theme involves (1) designing indices and applications that incorporate satellite observations to detect, monitor and investigate climatic changes and their impacts on coastal and open ocean ecosystems, (2) identifying and meeting the satellite climate needs of a wide variety of users, including research, business and industry, and government and private sector users, and (3) contributing significantly to climate reanalysis projects when satellite data is a key input. III. Climate Research and Modeling: Research conducted under this theme is focused on improving climate forecasts on mesoscale, regional and global scales when satellite data is a key input, and developing regional ecosystem models that can incorporate satellite observations to predict the impact of climate change on these ecosystems, particularly those located in the Mid-Atlantic region. The CI is also expected to play a significant role in National Centers for Environmental Prediction (NCEP) Climate Test Bed projects when satellite data is a key input. This announcement provides requirements for the proposed CI and includes details for the technical program, evaluation criteria, and competitive selection procedures. Applicants should review the NOAA Administrative Order 216–107 and CI Interim Handbook prior to preparing a proposal for this announcement.

DATES: Proposals must be received by NESDIS no later than February 3, 2009, 5 p.m., E.T. Proposals submitted after that date will not be considered.

ADDRESSES: The standard application package is available at *http://www.grants.gov.* For applicants without Internet access, an application package may be requested from Ingrid Guch, NOAA/NESDIS, 5200 Auth Road, Room 701, Camp Springs, Maryland 20746. Applicants are strongly encouraged to apply online through the Grants.gov Web site. Paper submissions are acceptable only if Internet access is not

available. Grants.gov requires applicants to register with the system prior to submitting an application. This registration process can take several weeks, involving multiple steps. In order to allow sufficient time for this process, you should register as soon as you decide that you intend to apply, even if you are not yet ready to submit your proposal. If an applicant has problems downloading the application package from Grants.gov, contact Grants.gov Customer Support at (800) 518–4726 or *support@grants.gov.* For non-Windows computer systems, please *see www.grants.gov/Mac* Support for information on how to download and submit an application through Grants.gov. If a hard copy application is submitted, please include an original of two unbound copies of the proposal. Paper submissions should be submitted to Ms. Guch at the above-listed address.

FOR FURTHER INFORMATION CONTACT: For a copy of the Federal Funding Opportunity announcement and/or application package, please access grants.gov; the NOAA Cooperative Institute Web site (*http://www.nrc.noaa.gov/ci*) or contact Ingrid Guch, NOAA/NESDIS; 5200 Auth Road, Room 701; Camp Springs, Maryland 20746, or by phone at (301) 763–8282 ext. 152, or fax to (301) 763–8108, or via internet at *ingrid.guch@noaa.gov*.

SUPPLEMENTARY INFORMATION: One of NOAA's strategic goals is to ''understand and describe climate variability and change to enhance society's ability to plan and respond.'' The Satellite Climate Studies CI will provide strong and sustained academic partners towards realizing this goal. It is essential for NOAA federal scientists to substantially collaborate with outstanding researchers in academia in order to produce climate information and services that are based on satellite data and knowledge from many disciplines (physics, chemistry, biology, geography, earth science, oceanography, meteorology and sociology, etc.). The sustained nature of a Satellite Climate Studies CI (5–10 years) will provide significant opportunity to enhance NOAA's operational decision support tools to provide climate services for national socioeconomic benefits, a key goal area of research specified by NOAA's 5-year Research Plan and 20-year Research Vision. Additionally, the Satellite Climate Studies CI will also serve another important function in support of NOAA's ongoing research: Educating, training and sustaining a world class workforce. These goals will be accomplished through NOAA-academia projects in which the research institution brings a strong heritage in satellite remote sensing and climate applications. CI Concept/Program Background: A CI is a NOAA-supported, non-Federal organization that has established an outstanding research program in one or more areas that are relevant to the NOAA mission to understand and predict changes in the Earth's environment and conserve and manage coastal and marine resources to meet our Nation's economic, social, and environmental needs. The CI is established at research institutions that also have a strong education program with established graduate degree programs in NOAA-related sciences. The CI provides significant coordination of resources among all non-government partners and promotes the involvement of students and post-doctoral scientists in NOAA-funded research. The CI provides mutual benefits with value provided by all parties. NOAA establishes a new CI competitively when it identifies a need to sponsor a long-term (5–10 years) collaborative partnership with one or more outstanding non-Federal, non-profit research institutions. For NOAA, the purpose of this long-term collaborative partnership is to promote research, education, training, and outreach aligned with the NOAA mission; to obtain research capabilities that do not exist internally; and/or to expand research capacity in NOAA-related sciences to: Conduct collaborative, long-term research that involves NOAA scientists and those at the research institution(s) from one or more scientific disciplines of interest to NOAA; utilize the scientific, education, and outreach expertise at the research institution(s) that, depending on NOAA's research needs, may or may not be located near a NOAA facility; support student participation in NOAA-related research studies; and strengthen or expand NOAA-related research capabilities and capacity at the research institution(s) that complements and contributes to the NOAA ability to reach its mission goals. A CI will consist of one or more research institutions that demonstrate outstanding performance within one or more established research programs in NOAA-related sciences. These institutions may include Minority Serving Institutions and universities with strong departments that can contribute to the proposed activities of the CI. CIs conduct research under approved scientific research themes (*see* Section I.B of the Full Funding Opportunity announcement) and Tasks (additional tasks can be proposed by the CI): Task I activities are related to the management of the CI, as well as general education and outreach activities. This task also includes support of postdoctoral and visiting scientists conducting activities within the research themes of the CI that are approved by the CI Director, in consultation with NOAA, and are relevant to NOAA and the CI mission goals. Task II activities usually involve on-going direct collaboration with NOAA scientists. This collaboration typically is fostered by the collocation of Federal and CI employees. Task III activities require minimal collaboration with NOAA scientists and may include research funded by other NOAA competitive grant programs.

Electronic Access: The full text of the full funding opportunity announcement for this program can be accessed via the Grants.gov Web site at *http://www.grants.gov*. The announcement will also be available by contacting the program officials identified under **FOR FURTHER INFORMATION CONTACT**. Applicants must comply with all requirements contained in the full funding opportunity announcement.

Statutory Authority: 15 U.S.C. 313, 49 U.S.C. 44720(b), 15 U.S.C. 2901, 15 U.S.C. 1540, 33 U.S.C. 883d, 118 Stat. 71.

CFDA: 11.440, Environmental Sciences, Applications, Data, and Education.

Funding Availability: NOAA expects that approximately $13M will be available for the CI in the first year of the award. The Task I budget should not exceed $400,000. The final amount of funding available for Task I will be determined during the negotiation phase of the award based on availability of funding. Funding for subsequent years is expected to be constant throughout the period and will depend on the quality of the research, the satisfactory progress in achieving the stated goals described in the proposal, continued relevance to program objectives, and the availability of funding.

Eligibility: Eligibility is limited to non-Federal public and private non-profit universities, colleges and research institutions that offer accredited graduate level degree-granting programs in NOAA-related sciences, as described in the CI Interim Handbook.

Cost Sharing Requirements: To stress the collaborative nature and investment of a CI by both NOAA and the research institution, cost sharing is required. There is no minimum cost sharing requirement; however, the amount of cost sharing will be considered when determining the level of the CI commitment under the NOAA standard

evaluation criteria for overall qualifications of applicants. Acceptable cost-sharing proposals include, but are not limited to, offering a reduced indirect cost rate against activities in one or more Tasks, waiver of indirect costs assessed against base funds and/or Task I activities, waiver or reduction of any costs associated with the use of facilities at the CI, and full or partial salary funding for the CI director, administrative staff, graduate students, visiting scientists, or postdoctoral scientists.

Evaluation And Selection Procedures: The general evaluation criteria and selection factors that apply to full applications to this funding opportunity are summarized below. The evaluation criteria for full applications will have different weights and details. Further information about the evaluation criteria and selection factors can be found in the full funding opportunity announcement.

Evaluation Criteria For Projects: Proposals will be evaluated using the standard NOAA evaluation criteria. Various questions under each criterion are provided to ensure that the applicant includes information that NOAA will consider important during the evaluation, in addition to any other information provided by the applicant.

i. Importance and/or relevance and applicability of proposed project to the program goals (25 percent): This criterion ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, state, or local activities.

—Does the proposal include research goals and projects that address the critical issues identified in the NOAA 5-year Research Plan, the NOAA Strategic Plan, and the priorities described in the program priorities section (see section I.B. of the Full Funding Opportunity announcement)?

—Is there a demonstrated commitment (in terms of resources and facilities) to enhance existing NOAA and CI resources to foster a long-term collaborative research environment/culture?

—Will most of the staff at the CI be located near one of two NOAA facilities, the National Center for Weather and Climate Prediction in Riverdale Park, Maryland, or the National Climatic Data Center in Asheville, North Carolina, to enhance collaborations with NOAA? Examples include (1) Academic institution of higher learning in Asheville, North Carolina metropolitan area and/or Washington, DC metropolitan area; and/or (2) Office space located in Asheville, North Carolina metropolitan area and/or Washington, DC metropolitan area hosting at least 20 institute/consortium personnel; and/or (3) Willingness to allow at least 20 students or professors to work at the NOAA site in Asheville, North Carolina metropolitan area and/or Washington, DC metropolitan area.

ii. Technical/scientific merit (30 percent): This criterion assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives.

—Does the project description include a summary of clearly stated goals to be achieved during the five-year period that reflect the NOAA strategic plan and goals?

—Does the CI involve partnerships with other universities or research institutions, including Minority Serving Institutions and universities with strong departments that can contribute to the proposed activities of the CI?

iii. Overall qualifications of applicants (30 percent): This criterion ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project.

—If the institution(s) and/or PIs have received current or recent NOAA funding, is there a demonstrated record of outstanding performance working with NOAA and/or NOAA scientists on research projects?

—Is there nationally and/or internationally recognized expertise within the appropriate disciplines needed to conduct the collaborative/interdisciplinary research described in the proposal?

—Is there a well-developed business plan that includes fiscal and human resource management, as well as strategic planning and accountability?

—Are there any unique capabilities in a mission-critical area of research for NOAA?

—Has the applicant shown a substantial investment to the NOAA partnership, as demonstrated by the amount of the cost sharing contribution?

iv. Project costs (5 percent): The budget is evaluated to determine if it is realistic and commensurate with the project needs and timeframe.

v. Outreach and education (10 percent): NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources.

—Is there a strong education program with established graduate degree programs in NOAA-related sciences that also encourages student participation in NOAA-related research studies?

Review And Selection Process: An initial administrative review/screening is conducted to determine compliance with requirements/completeness. All proposals will be evaluated and individually ranked in accordance with the assigned weights of the above-listed evaluation criteria by an independent peer review panel. At least three experts, who may be Federal or non-Federal, will be used in this process. If non-Federal experts participate in the review process, each expert will submit an individual review and there will be no consensus opinion. The merit reviewers ratings are used to produce a rank order of the proposals. The Selecting Official selects proposals after considering the peer reviews and selection factors listed below. In making the final selections, the Selecting Official will award in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the selection factors.

Selection Factors For Projects: The merit review ratings shall provide a rank order to the Selecting Official for final funding recommendations. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based on one or more of the following factors: 1. Availability of funding 2. Balance and distribution of funds a. By research area b. By project type c. By type of institutions d. By type of partners e. Geographically 3. Duplication of other projects funded or considered for funding by NOAA/federal agencies. 4. Program priorities and policy factors. 5. Applicant prior award performance. 6. Partnerships with/Participation of targeted groups. 7. Adequacy of information necessary for NOAA staff to make a National Environmental Policy Act (NEPA) determination and draft necessary documentation before recommendations for funding are made to the NOAA Grants Officer.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Limitation Of Liability: In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does

not oblige NOAA to award any specific project or to obligate any available funds.

National Environmental Policy Act (NEPA): NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/,* including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (*e.g.*, the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department Of Commerce Pre-Award Notification Requirements For Grants And Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696), are applicable to this solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF–LLL and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provision of law, no person is required to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866: This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/Regulatory Flexibility Act: Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements for the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Charles S. Baker,

Deputy Assistant Administrator for Satellite and Information Services.

[FR Doc. E8–30770 Filed 12–24–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2008–0060]

Grant of Interim Extension of the Term of U.S. Patent No. 4,971,802; Mifamurtide

AGENCY: United States Patent and Trademark Office.

ACTION: Notice of interim patent term extension.

SUMMARY: The United States Patent and Trademark Office has issued a certificate under 35 U.S.C. 156(d)(5) for a second one-year interim extension of the term of U.S. Patent No. 4,971,802.

FOR FURTHER INFORMATION CONTACT: Raul Tamayo by telephone at (571) 272–7728; by mail marked to his attention and addressed to the Commissioner for Patents, Mail Stop Hatch-Waxman PTE, P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to his attention at (571) 273–7728, or by e-mail to *Raul.Tamayo@uspto.gov*.

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to a year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On October 10, 2008, IDM Pharma, agent/licensee of patent owner Novartis, timely filed an application under 35 U.S.C. 156(d)(5) for a second interim extension of the term of U.S. Patent No. 4,971,802. Claims of the patent cover the product Mifamurtide having the active ingredient muramyl tripeptide phosphatidyl ethanolamine. The application indicates, and the Food and Drug Administration has confirmed, that a New Drug Application for the human drug product Mifamurtide has been filed and is currently undergoing regulatory review before the Food and Drug Administration for permission to market or use the product commercially.

Review of the application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for an additional year as required by 35 U.S.C. 156(d)(5)(B). Because it is apparent that the regulatory review period will continue beyond the extended expiration date of the patent (November 20, 2008), interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

A second interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 4,971,802 is granted for a period of one year from the extended expiration date of the patent, i.e., until November 20, 2009.

Dated: December 18, 2008.

John J. Doll,

Acting Deputy Under Secretary of Commerce for Intellectual Property and Acting Deputy Director of the United States Patent and Trademark Office.

[FR Doc. E8–30781 Filed 12–24–08; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Notice of Intent to Renew Currently Approved Collection: 3038–0024.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before February 27, 2009.

FOR FURTHER INFORMATION OR A COPY CONTACT: Mark H. Bretscher, Division of Clearing and Intermediary Oversight, CFTC, (312) 596–0529; FAX: (312) 596–0714; e-mail: *Mbretscher@cftc.gov* and refer to OMB Control No. 3038–0024.

SUPPLEMENTARY INFORMATION:

Title: Regulations and Forms Pertaining to the Financial Integrity of the Marketplace (OMB Control No. 3038–0024). This is a request for extension of a currently approved information collection.

Abstract: The commodity futures markets play a vital role in the furthering of global commerce by providing commercial users and speculators with a price discovery mechanism for the commodities traded on such markets and by providing commercial users of the markets with a mechanism for hedging their goods and services against price risks. The Commodity Futures Trading Commission is the independent federal regulatory agency charged with providing various forms of customer protection so that users of the markets can be assured of the financial integrity of the markets and the intermediaries that they employ in their trading activities. Among the financial safeguards the Commission has imposed on commodity brokerages, technically futures commission merchants (FCMs) and introducing brokers (IBs), are minimum capital standards and, for FCMs, a requirement that they segregate and separately account for the funds they receive from their commodity customers. In order to monitor compliance with such financial standards, the Commission has required FCMs and IBs to file financial reports with the Commission and with the self-regulatory organizations (SROs) of which they are members. (See Commission Rule 1.10, 17 CFR 1.10.)

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981).

Burden statement: The respondent burden for this collection is estimated to average .50 hours per response. These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Futures Commission Merchants, Introducing Brokers.

Estimated Number of respondents: 2,078.

Estimated total annual burden or respondents: 21,138.50 hours.

Frequency of collection: On occasion, monthly, annually, semi-annually.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0024 in any correspondence. Mark H. Bretscher, Division of Clearing and Intermediary Oversight, U.S. Commodity Futures Trading Commission, 525 W. Monroe Street, Suite 1100, Chicago, Illinois 60661 and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: December 19, 2008.

David Stawick,

Secretary of the Commission.

[FR Doc. E8–30905 Filed 12–24–08; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0048, Off-Exchange Agricultural Trade Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to off-exchange agricultural trade options.

DATES: Comments must be submitted on or before February 27, 2009.

ADDRESSES: Comments may be mailed to David Van Wagner, Division of Market Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: David Van Wagner, (202) 418–5481; FAX: (202) 418–5527; e-mail: *dvanwagner@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

• Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

Off-Exchange Agricultural Trade Options, OMB Control Number 3038–0048—Extension

In April 1998, the CFTC removed the prohibition on off-exchange trade options on the enumerated agricultural commodities subject to a number of regulatory requirements 63 FR 18821 (Apr. 16, 1998). Thereafter, the Commission streamlined the regulatory and paperwork burdens in order to increase the utility of agricultural trade options while maintaining basic customer protections. 64 FR 68011 (Dec. 6, 1999). Based on its experience in administering this program, the Commission has determined that its estimates of the burden of this collection of information remains unchanged based on the number of firms and individuals that may apply for registration. Responses to the collection of information are mandatory pursuant to Section 4c(b) of the Commodity Exchange Act.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR Part 32	360	On occasion	411	5.59	2,301

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: December 22, 2008.

David Stawick,

Secretary of the Commission.

[FR Doc. E8–30906 Filed 12–24–08; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial; Proposed Amendments

AGENCY: Joint Service Committee on Military Justice (JSC).

ACTION: Notice of public response to proposed amendments to the Manual for Courts-Martial, United States (2008 ed.) (MCM).

SUMMARY: The JSC is forwarding final proposed amendments to the MCM to the Department of Defense. The proposed changes constitute the 2008 annual review required by the MCM and DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 3, 2003. The proposed changes concern the rules of procedure and evidence and the punitive articles applicable in trials by courts-martial. These proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, ''Preparation, Processing and Coordinating Legislation, Executive Orders, Proclamations, Views Letters Testimony,'' June 15, 2007, and do not constitute the official position of the Department of Defense, the Military Departments, or any other Government agency.

ADDRESSES: Comments and materials received from the public are available for inspection or copying at the Air Force Legal Operations Agency, Military Justice Division, 112 Luke Avenue, Room 202, Bolling Air Force Base, District of Columbia between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Tom Wand, Executive Secretary, Joint Service Committee on Military Justice, 112 Luke Avenue, Suite 343, Bolling Air Force Base, District of Columbia 20032, (202) 767–1539, (202) 404–8755 fax.

SUPPLEMENTARY INFORMATION:

Background

On 19 September 2008, the JSC published a Notice of Proposed Amendments to the Manual for Courts-Martial and a Notice of Public Meeting to receive comments on these proposals. The public meeting was held on October 30, 2008. One individual representing an organization spoke at the public meeting to announce that the organization would be submitting written comments. One individual and one organization submitted comments through the **Federal Register** electronic bulletin board.

Discussion of Comments and Changes

The JSC considered the public comments and, coupled with the United States Court of Appeals for the Armed Forces recently hearing arguments on issues of child pornography with decisions pending, decided to withdraw the proposed addition of a paragraph addressing child pornography under Article 134 in Part IV of the MCM. The child pornography proposal will continue to be considered as part of the 2009 annual review. The JSC is satisfied the other proposed amendments are appropriate to implement without modification. The JSC will forward the public comments and proposed amendments to the Department of Defense.

The public comments regarding the proposed changes follow:

a. Recommended adding, ''or knowingly, wrongfully, and purposefully facilitated such conduct'' to the element of the proposed Article 134 offense of possessing, receiving or viewing child pornography. Since the proposed paragraph is being withdrawn from the 2008 annual review, this comment will be considered in the 2009 annual review.

b. Recommended deleting or redrafting the explanation of the child pornography paragraph requiring awareness of the contraband nature of the visual depictions in the offenses of possessing, receiving, viewing, distributing, or producing child pornography. Since the proposed paragraph is being withdrawn from the 2008 annual review, this comment will be considered in the 2009 annual review.

c. Recommended deleting the affirmative defense that all of the persons engaging in sexually explicit conduct in a visual depiction were in fact persons at least 18 years old. Since the proposed paragraph is being withdrawn from the 2008 annual review, this comment will be considered in the 2009 annual review.

d. Noted the high maximum fines for civilians at summary and special courts-

martial. The JSC considered that civilians are not subject to all the forms of punishment applicable to servicemembers. The JSC also considered that maximums must take into account the highest paid civilians, including contractors, and that maximums are potential only, and not necessarily appropriate to every case or accused. In addition, the JSC considered that an accused has a right to decline trial by a summary court-martial.

e. Noted no difference between the proposed Part IV, paragraph 44, Article 119, Manslaughter, paragraph b.(2)(d), and what appears in the MCM (2008 ed.). While this is correct, the problem arose in the July 24, 2008 Executive Order 13468 amending the MCM. This was explained in the proposed additions to *Appendix 23, Analysis of Punitive Articles.*

f. Suggested that Staff Judge Advocate Recommendations be required to address whether corrective action should be taken in response to R.C.M. 1105 submissions. The proposed rule makes clear that such is required. The reason for restating the rule was explained in the proposed addition to *Appendix 21, Analysis of Rules for Courts-Martial.*

g. Raised several concerns regarding the adequacy of the rulemaking process itself. The JSC considered these concerns and determined that the rulemaking process is adequate, satisfies statutory requirements, and provides meaningful opportunity for public participation. However, the JSC particularly noted a concern that the **Federal Register** notice invited members to suggest changes to the MCM in accordance with a format purportedly described in an internal operating procedure. The reference should have been to a format described in DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 3, 2003, Enclosure 2, paragraph E2.4.6, which is included in *Appendix 26* of the MCM.

Proposed Amendments After Period for Public Comment

The proposed recommended amendments to the MCM to be forwarded through the DoD for action by Executive Order of the President of the United States are as follows:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 1003(b)(3) is amended to read as follows:

''(3) *Fine.* Any court-martial may adjudge a fine in lieu of or in addition to forfeitures. In the case of a member of the armed forces, summary and special courts-martial may not adjudge any fine or combination of fine and forfeitures in excess of the total amount of forfeitures that may be adjudged in that case. In the case of a person serving with or accompanying an armed force in the field, a summary court-martial may not adjudge a fine in excess of two-thirds of one month of the highest rate of enlisted pay, and a special court-martial may not adjudge a fine in excess of two-thirds of one year of the highest rate of officer pay. In order to enforce collection, a fine may be accompanied by a provision in the sentence that, in the event the fine is not paid, the person fined shall, in addition to any period of confinement adjudged, be further confined until a fixed period considered an equivalent punishment to the fine has expired. The total period of confinement so adjudged shall not exceed the jurisdictional limitations of the courts-martial;''

(b) R.C.M. 1003(c) is amended by renumbering subparagraph (4) as subparagraph (5) and adding a new subparagraph (4) as follows:

''(4) *Based on status as a person serving with or accompanying an armed force in the field.* In the case of a person serving with or accompanying an armed force in the field, no court-martial may adjudge forfeiture of pay and allowances, reduction in pay grade, hard labor without confinement, or a punitive separation.''

(c) R.C.M. 1106(d) is amended to read as follows:

''(d) *Form and content of recommendation.*

(1) The purpose of the recommendation of the staff judge advocate or legal officer is to assist the convening authority to decide what action to take on the sentence in the exercise of command prerogative. The staff judge advocate or legal officer shall use the record of trial in the preparation of the recommendation, and may also use the personnel records of the accused or other matters in advising the convening authority whether clemency is warranted.

(2) *Form.* The recommendation of the staff judge advocate or legal officer shall be a concise written communication.

(3) *Required contents.* The staff judge advocate or legal advisor shall provide the convening authority with a copy of the report of results of trial, setting forth the findings, sentence, and confinement credit to be applied, a copy or summary of the pretrial agreement, if any, any recommendation for clemency by the sentencing authority made in conjunction with the announced sentence, and the staff judge advocate's concise recommendation.

(4) *Legal errors.* The staff judge advocate or legal officer is not required to examine the record for legal errors. However, when the recommendation is prepared by a staff judge advocate, the staff judge advocate shall state whether, in the staff judge advocate's opinion, corrective action on the findings or sentence should be taken when an allegation of legal error is raised in matters submitted under R.C.M. 1105 or when otherwise deemed appropriate by the staff judge advocate. The response may consist of a statement of agreement or disagreement with the matter raised by the accused. An analysis or rationale for the staff judge advocate's statement, if any, concerning legal error is not required.

(5) *Optional matters.* The recommendation of the staff judge advocate or legal officer may include, in addition to matters included under subsection (d)(3) and (4) of this rule, any additional matters deemed appropriate by the staff judge advocate or legal officer. Such matter may include matters outside the record.

(6) *Effect of error.* In case of error in the recommendation not otherwise waived under subsection (f)(6) of this rule, appropriate corrective action shall be taken by appellate authorities without returning the case for further action by a convening authority.''

(d) R.C.M. 1113(d)(2)(A)(iii) is amended to read as follows:

''(iii) Periods during which the accused is in custody of civilian or foreign authorities after the convening authority, pursuant to Article 57a(b)(1), has postponed the service of a sentence to confinement.''

(e) R.C.M. 1113(d)(2)(c) is amended by deleting the last two sentences, and replacing them with the following:

''No member of the armed forces, or person serving with or accompanying an armed force in the field, may be placed in confinement in immediate association with enemy prisoners or with other foreign nationals not subject to the code. The Secretary concerned may prescribe regulations governing the place and conditions of confinement.''

Section 2. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 32, Article 108, Military Property of the United States—sale, loss, damage, destruction, or wrongful disposition, paragraph c.(1) is amended to read as follows:

''(1) *Military Property.* Military property is all property, real or personal, owned, held, or used by one of the armed forces of the United States.

Military property is a term of art, and should not be confused with government property. The terms are not interchangeable. While all military property is government property, all government property is not military property. An item of government property is not military property unless the item in question meets the definition provided above. It is immaterial whether the property sold, disposed, destroyed, lost, or damaged had been issued to the accused, to someone else, or even issued at all. If it is proved by either direct or circumstantial evidence that items of individual issue were issued to the accused, it may be inferred, depending on all the evidence, that the damage, destruction, or loss proved was due to the neglect of the accused. Retail merchandise of service exchange stores is not military property under this article.''

(b) Paragraph 44, Article 119–Manslaughter, paragraph b.(2)(d) is amended to read as follows:

''(d) That this act or omission of the accused constituted culpable negligence, or occurred while the accused was perpetrating or attempting to perpetrate an offense directly affecting the person other than burglary, sodomy, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, robbery, or aggravated arson.''

(c) Paragraph 46, Article 121–Larceny and wrongful appropriation, the Note following paragraph b.(1)(d) is amended to read as follows:

Note: ''If the property is alleged to be military property, as defined in paragraph 46.c.(1)(h), add the following element''

(d) Paragraph 46, Article 121–Larceny and wrongful appropriation, is amended by re-lettering paragraph 46.c.(1)(h) as paragraph 46.c.(1)(i), and adding a new paragraph 46.c.(1)(h) as follows:

''(h) *Military Property.* Military property is all property, real or personal, owned, held, or used by one of the armed forces of the United States. Military property is a term of art, and should not be confused with government property. The terms are not interchangeable. While all military property is government property, all government property is not military property. An item of government property is not military property unless the item in question meets the definition provided above. Retail merchandise of service exchange stores is not military property under this article.''

Section. 3. These amendments shall take effect on [30 days after signature].

(a) Nothing in these amendments shall be construed to make punishable any act done or omitted prior to [30 days after signature] that was not punishable when done or omitted.

(b) Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceedings, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to [30 days after signature], and any such nonjudicial punishment, restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

The White House, Changes to the Discussion Accompanying the Manual for Courts-Martial, United States

(a) Paragraph (4) of the Discussion immediately after R.C.M. 202(a) is amended to read as follows:

''(4) *Limitations on jurisdiction over civilians.* Court-martial jurisdiction over civilians under the code is limited by judicial decisions. The exercise of jurisdiction under Article 2(a)(11) in peace time has been held unconstitutional by the Supreme Court of the United States. Before initiating court-martial proceedings against a civilian, relevant statutes, decisions, service regulations, and policy memoranda should be carefully examined.''

(b) The first paragraph of the Discussion following R.C.M. 1003(b)(3) is amended to read as follows: ''A fine is in the nature of a judgment and, when ordered executed, makes the accused immediately liable to the United States for the entire amount of money specified in the sentence. A fine normally should not be adjudged against a member of the armed forces unless the accused was unjustly enriched as a result of the offense of which convicted. In the case of a civilian subject to military law, a fine, rather than a forfeiture, is the proper monetary penalty to be adjudged, regardless of whether unjust enrichment is present.

Changes to Appendix 21, Analysis of Rules for Courts-Martial

(a) Add the following to the Analysis accompanying R.C.M. 1106(d):

''*200_ Amendment:* Subsection (d) is restated in its entirety to clarify that subsections (d)(4), (d)(5) and (d)(6) were not intended to be eliminated by the 2008 Amendment.

2008 Amendment: Subsections (d)(1) and (d)(3) were modified to simplify the requirements of the staff judge advocate's or legal officer's recommendation.''

Changes to Appendix 23, Analysis of Punitive Articles

(a) Add the following to the Analysis accompanying Paragraph 44, Article 119—Manslaughter:

''b. *Elements.*

200_ Amendment: Paragraph (4) of the elements is corrected to properly reflect the 2007 Amendment, which corrected wording was not included in the 2008 Amendment.

2008 Amendment: Notes were included to add an element if the person killed was a child under the age of 16 years.

e. *Maximum punishment.*

2008 Amendment: The maximum confinement for voluntary manslaughter when the person killed was a child under the age of 16 years was increased to 20 years. The maximum confinement for involuntary manslaughter when the person killed was a child under the age of 16 years was increased to 15 years.''

Dated: December 19, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–30794 Filed 12–24–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it is renewing the charter for the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries (hereafter referred to as the Board).

The Board is a non-discretionary federal advisory committee established under the provisions of 10 U.S.C. 1114, to advise and assist the Secretary of Defense on actuarial matters associated with the Department of Defense Medicare-Eligible Retiree Health Care

Fund. The Board shall report annually to the Secretary of Defense periodically, but no less than once every four years, to the President and the Congress on the status of the Fund to include recommendations for such changes as in the Board's judgment are necessary to protect the public interest and maintain the Fund on a sound actuarial basis.

The Board shall be composed of not more than three members appointed by the Secretary of Defense from among qualified professional actuaries who are members of the Society of Actuaries. The Board Members shall serve for a term of 15 years; except those Board Members appointed to fill a vacancy occurring before the end of the term for which the predecessor was appointed shall serve only until the end of such term. Board Members may serve after the end of the term until a successor has taken office. No Board Member, other than those originally appointed for less than a 15-year term or a Board Member appointed to fill an unexpired term may be reappointed for successive terms.

Board Members appointed by the Secretary of Defense, who are not full-time or permanent part-time federal employees, are appointed as experts and consultants under the authority of 5 U.S.C. 3109, and shall serve as Special Government employees. Pursuant to 10 U.S.C. 1114(a)(3), the members shall serve with compensation to include travel and per diem for official travel. The Chairperson of the Board shall be designated by the Under Secretary of Defense (Personnel and Readiness), on behalf of the Secretary of Defense.

The Board is authorized to establish Subcommittees or Working Groups, as necessary and consistent with its mission, and these Subcommittees or Working Groups shall operate under the provisions of the Federal Advisory Committee Act, the Government in the Sunshine Act of 1976, and other appropriate federal regulations.

Such Subcommittees or Working Groups shall not work independently of the chartered Board, and shall report their recommendations and advice to the Board for full deliberation and discussion. Subcommittees or Working Groups have no authority to make decisions on behalf of the chartered Board nor can they report directly to the Agency or any Federal officers or employees who are not Board Members.

FOR FURTHER INFORMATION CONTACT: Contact Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Board's Chairperson. The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or duly appointed Alternate Designated Federal Officer shall attend all committee meetings and subcommittee meetings.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries.

All written statements shall be submitted to the Designated Federal Officer for the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries' Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: December 19, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–30795 Filed 12–24–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability for the Final Environmental Impact Statement/ Environmental Impact Report and a Draft General Conformity Determination for the Berths 97–109 [China Shipping] Container Terminal Project, Port of Los Angeles, Los Angeles County, CA

AGENCY: Department of the Army—U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: On April 30, 2008, the U.S. Army Corps of Engineers, Los Angeles District, Regulatory Division (Corps) in coordination with the Los Angeles Harbor Department (LAHD) completed and published the Recirculated Draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Berths 97–109 [China Shipping] Container Terminal Project (Project) in the Port of Los Angeles. The Corps and LAHD considered all comments received in preparing the Final EIS/EIR, which is available for a 30-day review. The Final EIS/EIR includes a draft general conformity determination (see Section 3.2 and Appendix P), pursuant to Section 176(c) of the Clean Air Act. A general conformity determination is necessary because Project construction would require Federal action (i.e., issuance of a Corps permit for activities proposed in and over navigable waters and waters of the U.S.) and not all the Federal action's direct and indirect emissions would be below specified de minimis thresholds (40 CFR 93.153(b)). Pursuant to the general conformity regulations (40 CFR Part 93 Subpart B), general conformity determinations do not have to be included in the EIS and can be separately noticed, but the draft general conformity determination for the Federal action associated with the Project is being included in the Final EIS/EIR in this case.

The Final EIS/EIR, including the draft general conformity determination, is available for public review during the next 30 days at the Los Angeles Harbor Department, 425 South Palos Verdes Street, San Pedro, California, on the Port's Web site: *http://www.portoflosangeles.org,* and on the Corps' Web site: *http://www.spl.usace.army.mil/regulatory/POLA.htm* (scroll down to the links under China Shipping Project). In addition, the Final EIS/EIR, including the draft general conformity determination, is available at the

following libraries: L.A. Public Library, Central Branch, 630 West 5th Street, Los Angeles, California; L.A. Public Library, San Pedro Branch, 921 South Gaffey Street, San Pedro, California; and L.A. Public Library, Wilmington Branch, 1300 North Avalon, Wilmington, California.

Any comments received by the Corps and LAHD on the Final EIS/EIR or the included draft general conformity determination during the next 30 days will be considered fully before the Corps makes a final general conformity determination and finalizes the Record of Decision (ROD) for the Federal action associated with the Project. The Corps will publish a notice of a final general conformity determination in the **Federal Register** within 30 days of rendering a final decision. The public can request from the Corps copies of the ROD, which includes responses to comments on the Final EIS/EIR, including any on the draft general conformity determination, following publication of a final general conformity determination and upon execution of the ROD.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the Final EIS/EIR or the included draft general conformity determination should be directed within the next 30 days to Dr. Spencer D. MacNeil, Senior Project Manager, North Coast Branch, Regulatory Division, U.S. Army Corps of Engineers, 2151 Alessandro Drive, Suite 110, Ventura, California 93001, (805) 585–2152.

SUPPLEMENTARY INFORMATION: None.

David J. Castanon,

Chief, Regulatory Division, Los Angeles District.

[FR Doc. E8–30585 Filed 12–24–08; 8:45 am]

BILLING CODE 3710–KF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 28, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 22, 2008.

James Hyler,

Acting IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Quarterly Cumulative Caseload Report (RSA–113).

Frequency: Quarterly.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 80.

Burden Hours: 320.

Abstract: State agencies that administer vocational programs provide key caseload data on this form, including numbers of persons who are applicants, determined eligible/ineligible, waiting for services, and also their program outcomes. Rehabilitation Services Administration (RSA) collects this information quarterly from states and reports it in the Annual Report to Congress on the Rehabilitation Act.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3873. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–30806 Filed 12–24–08; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Agency Information Collection Activities: Proposed Collection, Comment Request; Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From the U.S. Election Assistance Commission; Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance From the U.S. Election Assistance Commission

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice and request for comments.

SUMMARY: The EAC, as part of its continuing effort to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on proposed information collections; and recordkeeping requirements. Comments are invited on: (a) Whether the proposed collections of information and/or recordkeeping requirements are necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collections and/or recordkeeping requirements, including the validity of the methodology and assumptions used; (c) ways to enhance

the quality, utility, and clarity of the information to be collected or records to be kept; and (d) ways to minimize the burden of the information collections and/or recordkeeping requirements on respondents. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval.

DATES: You must submit comments on or before 5 PM Eastern Standard Time on February 27, 2009.

ADDRESSES: You may submit comments on the proposed information collections and/or recordkeeping requirements by any of the following methods. Please submit your comments via only one of the methods described.

• *E-mail:* Send comments to *havainfo@eac.gov* with ''Comments for [Title of Regulation]'' in the subject line.

• *Fax:* Send to ''EAC Regulations'' at (202) 566–3128. Comments sent by fax must be limited to 6 pages.

• *Mail:* Send to ''EAC Regulations'' at U.S. Election Assistance Commission, 1225 New York Avenue, Suite 1100, Washington, DC 20005. Comments sent by mail must be unbound, be on paper no larger than 8.5'' by 11''; and be submitted in duplicate. Mailed comments will not be accepted in electronic form (floppy disk, CD, etc.).

• *Hand Delivery/Courier:* Deliver to Suite 1100, 1225 New York Avenue, Washington, DC 20005 between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. Comments submitted by hand delivery must be unbound, be on paper no larger than 8.5'' by 11''; and be submitted in duplicate. Comments sent by courier or hand delivery will not be accepted in electronic form (floppy disk, CD, etc.).

Instructions: All submissions must include the agency name and regulation title (*i.e.* ''Nondiscrimination on the Basis of Race, Color, or National Origin'') for this information collection/recordkeeping requirement. Please also identify comments on regulatory text by subpart and section. Note that all comments received will be publicly posted, including any personal information provided. The EAC will post comments without change unless the comment contains profanity or material that is prohibited from disclosure by law.

FOR FURTHER INFORMATION CONTACT: Tamar Nedzar, Attorney, U.S. Election Assistance Commission, 1225 New York Avenue NW., Suite 1100, Washington, DC 20005. Telephone (202) 566–3100.

SUPPLEMENTARY INFORMATION:

Title: Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance from the U.S. Election Assistance Commission:

OMB Number: Pending.

Type of Review: Regular submission.

Summary of Information Collections and Recordkeeping Requirements: (Full text of regulation at *http://www.eac.gov;* and available upon written request).

11 CFR 9421.5—Assurances required. Section 9421.5(a)(1) requires that applicants (individuals and facilities) for EAC's Federal financial assistance must provide a written assurance that they will comply with the requirements of Title VI of the Civil Rights Act of 1964. This assurance must be signed by the applicant and § 9421.5(a)(2) requires the assurance to be submitted to the Commission upon the award of Federal financial assistance. Similarly, § 9421.5(c) requires every application by a State or State agency to contain or be accompanied by a statement that the program will be conducted in compliance with all requirements of 11 CFR part 9421.

11 CFR 9421.5(a)(2)—Written notice to subrecipients. This section requires that the recipient provide each of its subrecipients with written notice of the subrecipient's obligations under this part whenever a recipient passes Federal financial assistance received from EAC to subrecipients.

11 CFR 9421.5(b)—Self-evaluation. This section provides that EAC may require a recipient employing 15 or more employees to complete a written self-evaluation of any race, color, or national origin distinction imposed in its program or activity receiving Federal financial assistance from EAC so that EAC may assess the recipient's compliance with the Act. This self-evaluation will be completed in a manner specified by EAC and will be made available on request to the Commission and the public. The purpose of the self-assessment is to indicate to the recipient any violation of the Act or of part 9421, and if a violation is identified the recipient is required to take corrective action to remedy the violation.

11 CFR 9421.5(b)—Recordkeeping. This section requires that the recipient must retain the self-evaluation for a period of three years following its completion.

11 CFR 9421.6—Discrimination complaints. This section provides that any individual who believes that he or she has been subjected to discrimination prohibited by part 9421 or who believes that a denial of his or her services results in discrimination prohibited by part 9421 may file a written complaint of discrimination with the Diversity Officer of EAC. Filing a complaint is strictly voluntary.

11 CFR 9421.6(b)(3), (4), and (5)—Agency support for the complaint process. These sections require the EAC to disseminate information regarding the obligations of recipients, and to notify the complainant and the recipient of their rights under the complaint process, including the right to have a representative at all stages of the complaint process; and of their right to contact the Commission for information and assistance regarding the complaint resolution process.

11 CFR 9421.6(e) and (f)—Complaint investigation and resolution. These sections provide that the Diversity Officer will notify the complainant and respondent of the receipt of a complaint; will examine the complaint for completeness and notify the complainant if additional information is needed; and will notify the complainant of the results of the investigation.

11 CFR 9421.6(g)—Appeals. This section requires a complainant to file a written appeal within 90 days of receipt from EAC of a letter that notifies the complainant of the results of the investigation of his or her complaint. This action is voluntary.

11 CFR 9421.7(b)—Recordkeeping. This section requires that each recipient of EAC's Federal financial assistance is required to keep records in a manner and containing information the Commission determines is necessary, make information available to the Commission upon request, and permit reasonable access by the Commission to the books, records, accounts, and other recipient facilities and sources of information. This information may be used by EAC to respond to Congressional inquiries, to assess the effectiveness of the regulations in 11 CFR part 9421, and as input into compliance reviews.

11 CFR 9421.7(c)—Information on protections against discrimination. This section requires each recipient to make available to participants, beneficiaries, and other interested persons information about the provisions of part 9421 and its applicability to the program for which the recipient receives Federal financial assistance.

11 CFR 9421.7(d)—Mediation. The section requires the Agency to refer complaints to the Federal Conciliation and Mediation Service (FCMS) prior to disposition by the EAC Diversity Officer and requires the complainant and the recipient to participate in at least one meeting with a mediator during the mediation process. If an agreement is reached, the complainant and the recipient must sign a written statement

of that agreement which will be prepared by the mediator. Third-party respondents include the complainant and the mediator.

11 CFR 9421.8(a)—Investigation and settlement of complaints. This section requires EAC to investigate complaints that are unresolved after mediation or are reopened because of an alleged violation of a mediation agreement. EAC will establish facts through such methods as discussion with the complainant and recipient and the review of documents in the possession of either party. Settlements shall be in writing and signed by the parties and by an authorized EAC official.

11 CFR 9421.8(c)(2)(iii)—Redisbursement of grant funds to an alternate recipient. This section provides that EAC may redisburse discretionary grant funds withheld or terminated under this part directly to an alternate recipient. EAC shall require the alternate recipient to demonstrate the ability to comply with the regulations and the ability to achieve the goals of the Federal statute authorizing the program or activity.

Needs and Uses: This information collection is required by Title VI of the Civil Rights Act of 1964 (the Act). Title VI, 42 U.S.C. 2000d *et seq.*, was enacted as part of the Civil Rights Act of 1964. It prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving Federal financial assistance. The information collected and maintained by the recipients of EAC's assistance is used internally by EAC for monitoring compliance with the civil rights laws and regulations. This information is made available to EAC officials, officials of other federal enforcement agencies, and to Congress for reporting purposes.

Information Collection Associated With Regulations

Affected Public: EAC grant recipients.

Estimated Number of Respondents: 96.

Total Annual Responses: 96.

Estimated Total Annual Burden Hours: 181 hours.

Recordkeeping Requirement Associated With Regulations

Affected Public: EAC grant recipients.

Estimated Number of Respondents: 84.

Total Annual Responses: 84.

Estimated Total Annual Burden Hours: 448 hours.

Title: Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the U.S. Election Assistance Commission:

OMB Number: Pending.

Type of Review: Regular submission.

Summary of Information Collections and Recordkeeping Requirements: (Full text of regulation at *http://www.eac.gov;* and available upon written request).

11 CFR 9422.5—Assurances required. Section 9422.5(a)(1) requires that applicants (individuals and facilities) for EAC's Federal financial assistance must provide a written assurance that they will comply with the requirements of the Age Discrimination Act of 1975 and 45 CFR part 90. This assurance must be signed by the applicant and § 9422.5(a)(2) requires the assurance to be submitted to the Commission upon the award of Federal financial assistance. Similarly, § 9422.5(c) requires every application by a State or State agency to contain or be accompanied by a statement that the program will be conducted in compliance with all requirements of 11 CFR part 9422.

11 CFR 9422.5(a)(2)—Written notice to subrecipients. This section requires that the recipient provide each of its subrecipients with written notice of the subrecipient's obligations under this part whenever a recipient passes Federal financial assistance received from EAC to subrecipients.

11 CFR 9422.5(b)—Self-evaluation. This section provides that EAC may require a recipient employing 15 or more employees to complete a written self-evaluation of any age distinction imposed in its program or activity receiving Federal financial assistance from EAC so that EAC may assess the recipient's compliance with the Act. This self-evaluation will be completed in a manner specified by EAC and will be made available on request to the Commission and the public. The purpose of the self-assessment is to indicate to the recipient any violation of the Act, 45 CFR part 90, or part 9422, and if a violation is identified, the recipient is required to take corrective action to remedy the violation.

11 CFR 9422.5(b)—Recordkeeping. This section requires that the recipient must retain the self-evaluation for a period of three years following its completion.

11 CFR 9422.6—Discrimination complaints. This section provides that any individual who believes that he or she has been subjected to discrimination prohibited by part 9422 or who believes that a denial of his or her services results in discrimination prohibited by part 9422 may file a written complaint of discrimination with the Diversity Officer of EAC. Filing a complaint is strictly voluntary.

11 CFR 9422.6(b)(3), (4), and (5)—Agency support for the complaint process. These sections require EAC to disseminate information regarding the obligations of recipients, and to notify the complainant and the recipient of their rights under the complaint process, including the right to have a representative at all stages of the complaint process, and of their right to contact the Commission for information and assistance regarding the complaint resolution process.

11 CFR 9422.6(e) and (f)—Complaint investigation and resolution. These sections provide that the Diversity Officer will notify the complainant and respondent of the receipt of a complaint; will examine the complaint for completeness and notify the complainant if additional information is needed; and will notify the complainant of the results of the investigation.

11 CFR 9422.6(g)—Appeals. This section requires a complainant to file a written appeal within 90 days of receipt from EAC of a letter that notifies the complainant of the results of the investigation of his or her complaint. This action is voluntary.

11 CFR 9422.7(b)—Recordkeeping. This section requires that each recipient of EAC's Federal financial assistance is required to keep records in a manner and containing information the Commission determines is necessary, make information available to the Commission upon request, and permit reasonable access by the Commission to the books, records, accounts, and other recipient facilities and sources of information. This information may be used by EAC to respond to Congressional inquiries, to assess the effectiveness of the regulations in 11 CFR part 9422, and as input into compliance reviews.

11 CFR 9422.7(c)—Information on protections against discrimination. This section requires each recipient to make available to participants, beneficiaries, and other interested persons information about the provisions of part 9422 and its applicability to the program for which the recipient receives Federal financial assistance. EAC anticipates that each recipient will prepare a fact sheet meeting the requirements of this section and will have it available upon request, including having it available on a website that may be maintained by the recipient.

11 CFR 9422.7(d)—Mediation. The section requires the Agency to refer complaints to the Federal Conciliation and Mediation Service (FCMS) prior to disposition by the EAC Diversity Officer and requires the complainant and the

recipient to participate in at least one meeting with a mediator during the mediation process. If an agreement is reached, the complainant and the recipient must sign a written statement of that agreement which will be prepared by the mediator. Third-party respondents include the complainant and the mediator.

11 CFR 9422.8(a)—Investigation and settlement of complaints. This section requires EAC to investigate complaints that are unresolved after mediation or are reopened because of an alleged violation of a mediation agreement. EAC will establish facts through such methods as discussion with the complainant and recipient and the review of documents in the possession of either party. Settlements shall be in writing and signed by the parties and by an authorized EAC official.

11 CFR 9422.8(c)(2)(iii)—Redisbursement of grant funds to an alternate recipient. This section provides that EAC may redisburse discretionary grant funds withheld or terminated under this part directly to an alternate recipient. EAC shall require the alternate recipient to demonstrate the ability to comply with the regulations and the ability to achieve the goals of the Federal statute authorizing the program or activity.

Needs and Uses: This information collection is required by the Age Discrimination Act of 1975, consistent with the government-wide age discrimination regulation contained at 45 CFR part 90. This law and regulation prohibit discrimination on the basis of age in programs and activities receiving federal financial assistance. The information collected and maintained by the recipients of EAC's assistance is used internally by EAC for monitoring compliance with age discrimination laws and regulations. This information is made available to EAC officials, officials of other federal enforcement agencies, and to Congress for reporting purposes.

Information Collection Associated With Regulations

Affected Public: EAC grant recipients.

Estimated Number of Respondents: 96.

Total Annual Responses: 96.

Estimated Total Annual Burden Hours: 181 hours.

Recordkeeping Requirement Associated With Regulations

Affected Public: EAC grant recipients.

Estimated Number of Respondents: 84.

Total Annual Responses: 84.

Estimated Total Annual Burden Hours: 448 hours.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. E8–30823 Filed 12–24–08; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11945–002]

Symbiotics, LLC; Dorena Hydro, LLC; Notice of Application for Transfer of License, and Soliciting Comments, Motions To Intervene, and Protests

December 18, 2008.

On November 17, 2008, Symbiotics, LLC (Transferor) and Dorena Hydro, LLC (Transferee) filed an application, for transfer of license of the Dorena Lake Dam Project, located on the Row River in Lane County, Oregon.

Applicants seek Commission approval to transfer the license for the Symbiotics, LLC to Dorena Hydro, LLC

Applicant Contact: Mr. Brent L. Smith, 4110 East 300 North, P.O. Box 535, Rigby, ID 83442, Phone (208) 745–0834.

FERC Contact: Robert Bell (202) 502–6062.

Deadline for filing comments, motions to intervene: 30 days from the issuance of this notice. Comments, motions to intervene, and notices of intent may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–11945–002) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30748 Filed 12–24–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 18, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER03–774–009.

Applicants: Eagle Energy Partners I, L.P.

Description: Eagle Energy Partners I, LP submits Third Revised First Revised Sheet No. 3 *et al.* to First Revised Rate Schedule FERC No. 1, to be effective 9/18/07.

Filed Date: 12/12/2008.

Accession Number: 20081215–0224.

Comment Date: 5 p.m. Eastern Time on Friday, January 2, 2009.

Docket Numbers: ER03–1079–010; ER99–1005–010.

Applicants: Kansas City Power & Light Company, Aquila, Inc.

Description: Request for Waiver of Order No. 697.

Filed Date: 12/17/2008.

Accession Number: 20081217–5114.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: ER07–189–006; ER07–190–006; ER07–191–006; ER07–192–004.

Applicants: Duke Energy Indiana, Inc.; Duke Energy Kentucky, Inc.; Duke Energy Ohio, Inc.; Duke Energy Business Services, Inc.

Description: Duke Energy Indiana, Inc., *et al.* submits Updated Market Power Analysis under ER07–189, *et al.*

Filed Date: 12/17/2008.

Accession Number: 20081217–5161.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 7, 2009.

Docket Numbers: ER08–447–000; ER08–448–000.

Applicants: PSEG Fossil LLC; PSEG Nuclear LLC.

Description: PSEG Fossil LLC *et al.* submits replacement market based rates tariffs with a corrected effective date of 1/15/08.

Filed Date: 12/12/2008.

Accession Number: 20081215–0222.

Comment Date: 5 p.m. Eastern Time on Friday, January 2, 2009.

Docket Numbers: ER08–770–002.

Applicants: Longview Power, LLC.

Description: Longview Power, LLC submits revisions to Rate Schedule FERC No. 1, pursuant to Order 697–A.

Filed Date: 12/12/2008.

Accession Number: 20081215–0223.

Comment Date: 5 p.m. Eastern Time on Friday, January 2, 2009.

Docket Numbers: ER08–1410–002.
Applicants: PacifiCorp.
Description: PacifiCorp submits its compliance filing pursuant to FERC's 10/14/08 order.
Filed Date: 12/15/2008.
Accession Number: 20081217–0068.
Comment Date: 5 p.m. Eastern Time on Monday, January 5, 2009.

Docket Numbers: ER09–70–002.
Applicants: Niagara Mohawk Power Corporation.
Description: Niagara Mohawk Power Corporation submits the amended Carr Street IA in an Order 614-compliant format as Attachment A to the instant filing.
Filed Date: 12/15/2008.
Accession Number: 20081217–0099.
Comment Date: 5 p.m. Eastern Time on Monday, January 5, 2009.

Docket Numbers: ER09–413–000.
Applicants: Ameren Services Company.
Description: Central Illinois Public Service Co. submits an executed agreement for Wholesale Distribution Service.
Filed Date: 12/15/2008.
Accession Number: 20081217–0085.
Comment Date: 5 p.m. Eastern Time on Monday, January 5, 2009.

Docket Numbers: ER09–414–000.
Applicants: Aquila Inc.
Description: Aquila, Inc. requests acceptance of and authorization for its withdrawal of the MISO TOA to be made effective 11/8/08.
Filed Date: 12/15/2008.
Accession Number: 20081217–0084.
Comment Date: 5 p.m. Eastern Time on Monday, January 5, 2009.

Docket Numbers: ER09–416–000.
Applicants: Consolidated Edison Co. of New York, Inc.
Description: Consolidated Edison Co. of New York, Inc. submits notices of cancellation for multiple rate schedules.
Filed Date: 12/15/2008.
Accession Number: 20081217–0080.
Comment Date: 5 p.m. Eastern Time on Monday, January 5, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–36–003.
Applicants: Cleco Power LLC.
Description: Attachment K Compliance Filing of Cleco Power LLC.
Filed Date: 12/17/2008.
Accession Number: 20081217–5129.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 7, 2009.

Docket Numbers: OA08–37–002.
Applicants: Southern Company Services, Inc.
Description: Southern Company Services, Inc. submits its Compliance Filing Made under Protest to their Attachment K Order.
Filed Date: 12/17/2008.
Accession Number: 20081217–5157.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 7, 2009.

Docket Numbers: OA08–46–002; OA07–36–003.
Applicants: South Carolina Electric & Gas Company.
Description: Attachment K Compliance Filing of South Carolina Electric & Gas Company.
Filed Date: 12/17/2008.
Accession Number: 20081217–5158.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 7, 2009.

Docket Numbers: OA08–50–001; OA08–51–002.
Applicants: Progress Energy Carolinas, Inc., Duke Energy Carolinas, LLC.
Description: Compliance Filing of Duke Energy Carolinas, LLC, and Progress Energy Carolinas, Inc. under OA08–50, *et al.*
Filed Date: 12/17/2008.
Accession Number: 20081217–5121.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 7, 2009.

Docket Numbers: OA09–14–000.
Applicants: Crystal Lake Wind, LLC.
Description: Petition for Waiver of Commission Rules under New Docket OA09–14.
Filed Date: 12/17/2008.
Accession Number: 20081217–5160.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 7, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–30754 Filed 12–24–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

December 17, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–30–000.
Applicants: Milford Power Company, LLC.
Description: Application of Milford Power Company, LLC for Order Extending Blanket Authorizations and Amending Reporting Requirements for Certain Future Transactions of Equity Interests under Section 203 of the FPA and Request for Waivers.
Filed Date: 12/12/2008.
Accession Number: 20081212–5133.
Comment Date: 5 p.m. Eastern Time on Friday, January 2, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–2259–006.
Applicants: LSP Energy Limited Partnership.
Description: LSP Energy Limited Partnership submits its updated market power analysis for the Southeast Region that demonstrates that it continues to be

eligible to make wholesale sales of electric capacity and energy at market based rates.

Filed Date: 12/12/2008.

Accession Number: 20081216–0129.

Comment Date: 5 p.m. Eastern Time on Friday, January 2, 2009.

Docket Numbers: ER05–1410–011; EL05–1410–011.

Applicants: PJM Interconnection, L.L.C.

Description: Report of PJM Interconnection, LLC on stakeholder process.

Filed Date: 12/12/2008.

Accession Number: 20081216–0121.

Comment Date: 5 p.m. Eastern Time on Friday, January 9, 2009.

Docket Numbers: ER05–1491–002.

Applicants: Vermont Yankee Nuclear Power Corporation.

Description: Vermont Yankee Nuclear Power Corporation submits an updated market power analysis, including a list of generation and transmission assets, etc.

Filed Date: 12/12/2008.

Accession Number: 20081216–0130.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 10, 2009.

Docket Numbers: ER08–1419–002.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits compliance amendments addressing availability of software design results etc.

Filed Date: 12/15/2008.

Accession Number: 20081217–0078.

Comment Date: 5 p.m. Eastern Time on Monday, January 5, 2009.

Docket Numbers: ER08–1552–001.

Applicants: Sierra Pacific Resources Operating Company.

Description: Nevada Companies submits revisions to the Sierra Pacific Resources Operating Companies FERC Electric Tariff Revised Volume 1 Open Access Transmission Tariff.

Filed Date: 12/12/2008.

Accession Number: 20081216–0128.

Comment Date: 5 p.m. Eastern Time on Friday, January 2, 2009.

Docket Numbers: ER08–1584–003.

Applicants: Black Hills Power, Inc.

Description: Black Hills Power, Inc. submits a Settlement Agreement and substitute pages under the Joint Open Access Transmission Tariff for the Common Use System.

Filed Date: 12/12/2008.

Accession Number: 20081216–0131.

Comment Date: 5 p.m. Eastern Time on Friday, January 2, 2009.

Docket Numbers: ER09–70–001.

Applicants: Niagara Mohawk Power Corporation.

Description: Refund Report regarding Carr Street Interconnection Agreement.

Filed Date: 12/15/2008.

Accession Number: 20081215–5153.

Comment Date: 5 p.m. Eastern Time on Monday, January 5, 2009.

Docket Numbers: ER09–172–001.

Applicants: Canandaigua Power Partners I, LLC.

Description: Canandaigua Power Partners I, LLC submits revised Substitute Original Sheet 1 *et al.* to FERC Electric Tariff, Original Volume 1 pursuant to Section 5a of the tariff, etc.

Filed Date: 12/12/2008.

Accession Number: 20081216–0123.

Comment Date: 5 p.m. Eastern Time on Friday, January 2, 2009.

Docket Numbers: ER09–173–001.

Applicants: Canandaigua Power Partners II, LLC.

Description: Canandaigua Power Partners II, LLC submits revised Substitute Original Sheet 1 *et al* to FERC Electric Tariff, Original Volume 1 pursuant to Section 5a of the tariff, etc.

Filed Date: 12/12/2008.

Accession Number: 20081216–0124.

Comment Date: 5 p.m. Eastern Time on Friday, January 2, 2009.

Docket Numbers: ER09–174–001.

Applicants: Evergreen Wind Power V, LLC.

Description: Evergreen Wind Power V, LLC submits revised Substitute Original Sheet 1 *et al.* to FERC Electric Tariff, Original Volume 1 pursuant to Section 5a of the tariff, etc.

Filed Date: 12/12/2008.

Accession Number: 20081216–0122.

Comment Date: 5 p.m. Eastern Time on Friday, January 2, 2009.

Docket Numbers: ER09–360–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co submit revisions to its Generator Special Facilities Agreement etc re Shiloh Wind Project 2, LLC.

Filed Date: 11/28/2008.

Accession Number: 20081209–0201.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 24, 2008.

Docket Numbers: ER09–406–000.

Applicants: Juice Energy, Inc.

Description: Juice Energy, Inc submits Notice of Cancellation of Third Revised Rate Schedule FERC 1, effective 12/31/08 under ER09–406 *et al.*

Filed Date: 12/11/2008.

Accession Number: 20081215–0219.

Comment Date: 5 p.m. Eastern Time on Friday, January 2, 2009.

Docket Numbers: ER09–408–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Twelve Unexecuted Conditional Firm Transmission Service Agreements with CEP Funding, LLC designated as Service Agreement 516 through 527 under Seventh Revised Volume 11 etc.

Filed Date: 12/12/2008.

Accession Number: 20081216–0127.

Comment Date: 5 p.m. Eastern Time on Friday, January 2, 2009.

Docket Numbers: ER09–409–000.

Applicants: WestConnect.

Description: WestConnect *et al.* submits the WestConnect Point-To-Point regional Transmission Service Experiment Participant Agreement etc.

Filed Date: 12/12/2008.

Accession Number: 20081216–0133.

Comment Date: 5 p.m. Eastern Time on Friday, January 2, 2009.

Docket Numbers: ER09–410–000.

Applicants: Delmarva Power & Light Company.

Description: Delmarva Power & Light Co. submits an executed Construction Agreement with Delaware Electric Cooperative designated as Original Service Agreement 2066 etc.

Filed Date: 12/12/2008.

Accession Number: 20081216–0126.

Comment Date: 5 p.m. Eastern Time on Friday, January 2, 2009.

Docket Numbers: ER09–411–000.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff.

Filed Date: 12/12/2008.

Accession Number: 20081216–0125.

Comment Date: 5 p.m. Eastern Time on Friday, January 2, 2009.

Docket Numbers: ER09–412–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits amendments to the PJM Open Access Transmission Tariff and the Reliability Assurance Agreement.

Filed Date: 12/12/2008.

Accession Number: 20081216–0132.

Comment Date: 5 p.m. Eastern Time on Friday, January 2, 2009.

Docket Numbers: ER09–415–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co submits the annual adjustment to a transmission service rate under the Interconnection Agreement with the City and County of San Francisco, designated as Revised Rate Schedule FERC 114.

Filed Date: 12/15/2008.

Accession Number: 20081217–0081.

Comment Date: 5 p.m. Eastern Time on Monday, January 5, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA09–13–000.

Applicants: Langdon Wind, LLC.

Description: Langdon Wind, LLC's Petition for Waiver of Commission Rules.

Filed Date: 12/16/2008.

Accession Number: 20081216–5053.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 06, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–30755 Filed 12–24–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

December 19, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP03–323–015.

Applicants: Williston Basin Interstate Pipeline Co.

Description: Williston Basin Interstate Pipeline Co re-files their Fourteenth Revised Sheet 724 to its FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 12/16/2008.

Accession Number: 20081218–0207.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: RP09–38–001.

Applicants: Sabine Pipe Line LLC.

Description: Sabina Pipe Line, LLC submits Substitute Second Revised Sheet 317 *et al.* to FERC Gas Tariff, Original Volume 1.

Filed Date: 12/16/2008.

Accession Number: 20081218–0210.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: RP09–74–001.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Co., LP submits Substitute Fourth Revised Sheet 1408 *et al.* to FERC Gas Tariff, Sixth Revised Volume 1.

Filed Date: 12/16/2008.

Accession Number: 20081218–0209.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: RP96–200–203.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: CenterPoint Energy Gas Transmission Co submits a corrected Attachment A to a negotiated rate agreement filed with CenterPoint Energy Resources Corp.

Filed Date: 12/16/2008.

Accession Number: 20081218–0208.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: RP09–159–000.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits Original Sheet No. 25C to FERC Gas Tariff, Second Revised Volume No. 1, to be effective 12/15/08.

Filed Date: 12/16/2008.

Accession Number: 20081218–0211.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: RP09–160–000.

Applicants: Egan Hub Partners, L.P.

Description: Egan Hub Storage, LLC submits Second Revised Sheet No. 2 *et al.* to FERC Gas Tariff, First Revised Volume No. 1, to be effective 2/1/09.

Filed Date: 12/16/2008.

Accession Number: 20081218–0212.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: RP09–161–000.

Applicants: Williston Basin Interstate Pipeline Co.

Description: Williston Basin Interstate Pipeline Co submits Fifty-Sixth Revised Sheet 16 *et al.* to FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 12/16/2008.

Accession Number: 20081218–0206.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: RP09–162–000.

Applicants: Mojave Pipeline Company.

Description: Mojave Pipeline Co submits Ninth Revised Sheet 202 *et al.* to FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 12/16/2008.

Accession Number: 20081218–0205.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: RP09–163–000.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Co submits Fourth Revised Sheet 202A.01 *et al.* to FERC Gas Tariff, Second Revised Volume 1A.

Filed Date: 12/16/2008.

Accession Number: 20081218–0204.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: RP09–164–000.

Applicants: Colorado Interstate Gas Company.

Description: Colorado Interstate Gas Co. submits Eighth Revised Sheet 17 *et al.* to FERC Gas Tariff, First Revised Volume 1.

Filed Date: 12/16/2008.

Accession Number: 20081218–0203.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: RP09–165–000.

Applicants: Young Gas Storage Company, Ltd.

Description: Young Gas Storage Co, Ltd submits Fifth Revised Sheet 9 *et al.* to FERC Gas Tariff, Original Volume 1, and to be effective 1/15/09.

Filed Date: 12/16/2008.

Accession Number: 20081218–0202.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: RP09–166–000.

Applicants: Cheyenne Plains Gas Pipeline Company, LLC.

Description: Cheyenne Plains Gas Pipeline Co, LLC submits First Revised Sheet 30 *et al.* to FERC Gas Tariff, Original Volume 1.

Filed Date: 12/16/2008.

Accession Number: 20081218–0201.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: RP09–167–000.

Applicants: Wyoming Interstate Company, Ltd.

Description: Wyoming Interstate Co, Ltd submits Third Revised Sheet 5B *et al.* to FERC Gas Tariff, Second Revised Volume 2, proposed to be effective.

Filed Date: 12/16/2008.

Accession Number: 20081218–0200.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Docket Numbers: RP09–168–000.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: Maritimes & Northeast Pipeline, LLC submits First Revised Sheet 494A to FERC Gas Tariff, First Revised Volume 1, to be effective 1/1/09.

Filed Date: 12/17/2008.

Accession Number: 20081218–0003.

Comment Date: 5 p.m. Eastern Time on Monday, December 29, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–30756 Filed 12–24–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF08–31–000; Docket No. PF08–32–000]

Florida Gas Transmission Company; Transcontinental Gas Pipe Line Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Mobile Bay Lateral Extension Project and the Pascagoula Expansion Project and Request for Comments on Environmental Issues

December 18, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of facilities proposed by Florida Gas Transmission Company's (FGT) Mobile Bay Lateral Extension Project in Mobile County, Alabama and Transcontinental Gas Pipe Line Corporation's (Transco) and FGT's Pascagoula Expansion Project in Jackson County, Mississippi and Mobile County, Alabama.

This notice announces the opening of the scoping process we will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will close on January 15, 2009.

This notice is being sent to affected landowners; federal, state, and local government representatives and agencies; environmental and public interest groups; Native American tribes; other interested parties in this proceeding; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Transco and/or FGT provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Projects

FGT's Mobile Bay Lateral Extension Project (Mobile Bay Project) would be located in Mobile County, Alabama. The existing Mobile Bay Lateral extends from FGT's mainlines near Citronelle, Alabama, to FGT's Compressor Station 44 (CS 44) in Mobile Bay, Alabama. FGT is requesting authorization to construct, own, and operate the facilities necessary to provide incremental firm transportation capacity of 342,610 million British thermal units per day (MMBtu/d) of natural gas from the proposed Gulf LNG Energy, LLC (Gulf LNG) Terminal Facility in Pascagoula, Mississippi to FGT's existing Mobile Bay Lateral. The new infrastructure would allow FGT to connect regassified liquefied natural gas (LNG) supply in south Alabama to the existing FGT system.

The Mobile Bay Project would consist of the following facilities:

- Installation of approximately 8.9 miles of 24-inch-diameter mainline pipeline, from near Grand Bay in Mobile County, Alabama to the existing FGT CS 44, (milepost [MP] 0.0);
- Installation of one new Meter and Regulation (M&R) Station (15–600 million cubic feet per day [mmcfd] with pig launcher at the tie-in with the proposed Pascagoula Expansion Project [MP 8.9]);
- Installation of one new Over Pressure Protection Regulator Station with pig receiver at the existing 30-inch Mobile Bay Lateral tie-in to the mainlines (located approximately 28.8 miles upstream from CS 44); and
- Station facility modifications at the existing FGT CS 44 (MP 0.0).

FGT and Transco jointly propose to construct the Pascagoula Expansion Project, which would connect to the approved Gulf LNG Facility in Pascagoula Mississippi. The project would involve the construction of about 15 miles of 26-inch-diameter pipeline extending from this receipt point interconnect to FGT's and Transco's existing Mobile Bay Lateral in Mobile County, Alabama (Pascagoula Supply Line) and modifications to FGT's and Transco's existing Compressor Station 82 in Mobile County, Alabama. The Pascagoula Supply Line would have a total capacity of 810,000 dekatherms per day.

The Pascagoula Expansion Project will consist of the following facilities:

- A receipt meter station near Pascagoula in Jackson County, Mississippi, at the terminus of the Gulf LNG Pipeline;
- Approximately 15 miles of 26-inch-diameter pipeline extending from this receipt point interconnect to FGT/Transco's existing Mobile Bay Lateral in Mobile County, Alabama (''Pascagoula Supply Line'');
- Modifications to FGT/Transco's existing Compressor Station 82 in Mobile County, Alabama; and
- Minor above-ground facilities.

The Pascagoula Expansion Project is directly related to FGT's proposed Mobile Bay Project in Docket No. PF08–31–000 and will be evaluated in a single environmental document. The Pascagoula Expansion Project would be the upstream pipeline delivering gas into FGT's proposed Mobile Bay Project.

The location of the project facilities is shown in Appendix 1.[1]

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

Land Requirements for Construction

Mobile Bay Project

Construction of the Mobile Bay Project's proposed facilities would require about 116.0 acres of land including above-ground facilities, pipeline, and access roads. Following construction, about 54.9 acres would be used for operation of the project's facilities. Of the remaining 61.1 acres of land, 33.8 acres would be overlapping existing permanent right-of-way and 27.3 acres would be restored or allowed to revert to former use along the pipeline right-of-way and above-ground facility sites.

Pascagoula Expansion Project

Construction of the proposed facilities for the Pascagoula Expansion Project would require about 191.7 acres of land including above-ground facilities, pipeline, and access roads. Following construction, about 97.7 acres would be used for operation of the project's facilities. The remaining 94.0 acres of land would be restored or allowed to revert to former use along the pipeline right-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we [2] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use
- Water resources, fisheries, and wetlands
- Cultural resources
- Vegetation and wildlife
- Air quality and noise
- Endangered and threatened species
- Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

With this NOI, we are asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Additional agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this NOI.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Transco. This preliminary list of issues may be changed based on your comments and our analysis.

- Cultural resources may be affected by the project.
- Potential impacts may occur to streams and wetlands.
- The project could potentially affect threatened or endangered species.
- Nearby residences may be affected by construction activities.
- We received comments from the public during FGT's and Transco's open house meetings suggesting that an alternative route for the Pascagoula

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

Expansion Project should parallel Interstate Route 90 through the Grand Bay National Wildlife Refuge (GBNWR). We welcome additional comments on this alternative route, including from the GBNWR.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Mobile Bay Lateral Extension Project and the Pascagoula Expansion Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before January 21, 2009.

For your convenience, there are three methods in which you can use to submit your comments to the Commission. In all instances please reference the project docket numbers PF08–31–000 and PF08–32–000 with your submission. The docket numbers can be found on the front of this notice. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''Sign up'' or ''eRegister.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Branch 2, PJ11.2.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain above-ground facilities.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

Once FGT and Transco formally file its applications with the Commission, you may want to become an ''intervenor,'' which is an official party to the proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until formal applications are filed with the Commission.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30744 Filed 12–24–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL03–147–006; EL03–182–007]

City of Glendale, California; Notice of Filing

December 18, 2008.

Take notice that on December 16, 2008, City of Glendale, California filed an amendment to the Agreement and Stipulation jointly filed with the Commission Trial Staff on January 26, 2004, in compliance with the Commission's November 14, 2008, Order Denying Rehearing. *Coral Power L.L.C., et al.*, 125 FERC ¶ 61,176 (2008).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for

review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 6, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30745 Filed 12–24–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–2–001]

Midwest Independent Transmission System Operator, Inc.; Notice of Filing

December 18, 2008.

Take notice that on December 15, 2008, Midwest Independent Transmission System Operator, Inc., on behalf of itself and the Board of Public Works, Blue Earth, Minnesota filed an executed Settlement Agreement and Explanatory Statement which represents a comprehensive resolution of the issues in Docket No. EL02–000 and in this proceeding, regarding Blue Earth's eligibility for base load Candidate Auction Revenue Rights, to become effective December 2008, in time for the 2009 and 2010 Auction Revenue Rights allocation.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 5, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30747 Filed 12–24–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD09–2–000]

Credit and Capital Issues Affecting the Electric Power Industry; Supplemental Notice of Technical Conference

December 18, 2008.

As announced in the Notice of Technical Conference issued on November 20, 2008, the Federal Energy Regulatory Commission (Commission) will hold a technical conference on January 13, 2009. The purpose of this conference is to provide the Commission with information on how the recent crisis in the financial markets is affecting the electric industry. The technical conference will explore issues regarding access to and cost of capital for both short-term operations and longer-term investments, as well as credit issues as they pertain to short-term markets. The technical conference will be held from 1 to 5 p.m. (EST), in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All interested persons are invited to attend, and registration is not required.

The agenda for this conference, with a list of participating panelists, is attached. There will be two panels. The first panel will discuss access to capital and cost of capital for operations and long-term investment. The second panel will discuss credit issues in short-term electricity markets, including a comparison of how credit is managed in other commodity markets.

As previously announced, a free Webcast of this event is available through *http://www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its Webcast. The Capitol Connection provides technical support for the Webcasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call 703–993–3100.

All interested persons may file written comments following the technical conference on or before January 30, 2009.

This conference will be transcribed. Transcripts of the meeting will be available immediately for a fee from Ace Reporting Company (202–347–3700 or 1–800–336–6646).

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about this conference, please contact: Clara Brooks, 202.502.8357, *clara.brooks@ferc.gov*, for logistical issues, and Scott Miller, 202.502.8456, *scott.miller@ferc.gov*, or Tina Ham, 202.502.6224, *tina.ham@ferc.gov*, for other concerns.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–30749 Filed 12–24–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2003–0033, FRL–8758–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Modification of Secondary Treatment Requirements for Discharges Into Marine Waters, EPA ICR Number 0138.09, OMB Control Number 2040–0088

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44

U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on May 31, 2009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 27, 2009.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OW–2003–0033, to EPA by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: OW–Docket@epa.gov.*
- *Fax:* (202) 566–9744
- *Mail:* Water Docket, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, 1301 Constitution Ave., NW., EPA West, Room 3334, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.
- *Instructions:* Direct your comments to Docket ID No. EPA–HQ–OW–2003–0033. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Virginia Fox-Norse, Office of Wetlands, Oceans and Watersheds: Oceans and Coastal Protection Division (Mail Code 4504T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–1266; fax number: (202) 566–1337; e-mail address: *fox-norse.virginia@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID number EPA–HQ–OW–2003–0033, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible, and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Docket ID No. EPA–HQ–OW–2003–0033.

Affected entities: Entities potentially affected by this action are those municipalities that currently have section 301(h) waivers from secondary treatment, have applied for a renewal of a section 301(h) waiver, or those with a pending section 301(h) waiver application, and the states within which these municipalities are located.

Title: Modification of Secondary Treatment Requirements for Discharges Into Marine Waters.

ICR numbers: EPA ICR No. 0138.09, OMB Control No. 2040–0088.

ICR status: This ICR is currently scheduled to expire on May 31, 2009. An Agency may not conduct or sponsor,

and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Regulations implementing section 301(h) of the Clean Water Act (CWA) are found at 40 CFR part 125, subpart G. The section 301(h) program involves collecting information from two sources: (1) The municipal wastewater treatment facility, commonly called a publicly-owned treatment works (POTW), and (2) the state in which the POTW is located. Municipalities had the opportunity to apply for a waiver from secondary treatment requirements, but that opportunity closed in December, 1982. A POTW that seeks a section 301(h) waiver does so voluntarily to obtain or retain a benefit. A section 301(h) waiver modifies secondary treatment requirements of CWA section 301(b)(1)(B). Secondary treatment requirements establish technology-based effluent limitations for biochemical oxygen demand (BOD), suspended solids (SS), and pH (a measure of acidity or alkalinity) (40 CFR part 133). A POTW seeking to obtain a section 301(h) waiver, holding a current waiver, or reapplying for a waiver, provides application, monitoring, and toxic control program information. The state provides information on its determination whether the discharge under the proposed conditions of the waiver ensures the protection of water quality, biological habitats, and beneficial uses of receiving waters. The state also provides information on whether the discharge will result in additional treatment, pollution control, or any other requirement for any other point or nonpoint sources. The state also provides information to certify that the discharge will meet all applicable state laws, and that the state accepts all permit conditions.

There are four situations where information will be required under the section 301(h) program:

(1) *A POTW continuing the application process for a section 301(h) waiver, or reapplying for a waiver:* As the permits with section 301(h) waivers reach their expiration dates, EPA must have updated information on the discharge to determine whether the section 301(h) criteria are still being met, and whether the section 301(h) waiver should be reissued. Under 40 CFR 125.59(f), each section 301(h) permittee is required to submit an application for a new section 301(h) modified permit within 180 days of the existing permit's expiration date. 40 CFR 125.59(c) lists the information required for a modified permit. The information that EPA needs to determine whether the POTW's reapplication meets the section 301(h) criteria is outlined in the questionnaire attached to 40 CFR part 125, subpart G.

(2) *Monitoring and toxic control program information:* Once a waiver has been granted, EPA must continue to assess whether the discharge is meeting section 301(h) criteria, and that the receiving water quality, biological habitats, and beneficial uses of the receiving waters are protected. To do this, EPA needs monitoring information furnished by the permittee. According to 40 CFR 125.68(d), any permit issued with a section 301(h) waiver must contain the monitoring requirements of 40 CFR 125.63(b), (c), and (d) for biomonitoring, water quality criteria and standards monitoring, and effluent monitoring, respectively. Section 125.68(d) also requires reporting at the frequency specified in the monitoring program. In addition to monitoring information, EPA needs information on the toxics control program required by section 125.66 to ensure that the permittee is effectively minimizing industrial and nonindustrial toxic pollutant and pesticide discharges into the treatment works.

(3) *Application revision information:* Section 125.59(d) of 40 CFR allows a POTW to revise its application one time only, following a tentative decision by EPA to deny the waiver request. In its application revision, the POTW usually corrects deficiencies and changes proposed treatment levels, as well as outfall and diffuser locations. The application revision is a voluntary submission for the applicant, and a letter of intent to revise the application must be submitted within 45 days of EPA's tentative decision (40 CFR 125.59(f)). EPA needs this information to evaluate revised applications to determine whether the modified discharge will ensure protection of water quality, biological habitats, and beneficial uses of receiving waters.

(4) *State determination and state certification information:* For revised or renewal applications for section 301(h) waivers, EPA needs a state determination. The state determines whether all state laws (including water quality standards) are satisfied. This helps ensure that water quality, biological habitats, and beneficial uses of receiving waters are protected. Additionally, the state must determine if the applicant's discharge will result in additional treatment, pollution control, or any other requirement for any other point or nonpoint sources. This process allows the state's views to be taken into account when EPA reviews the section 301(h) application and develops permit conditions. For revised and renewed section 301(h) waiver applications, EPA also needs the CWA section 401(a)(1) certification information to ensure that all state water quality laws are met by any permit it issues with a section 301(h) modification, and that the state accepts all the permit conditions. This information is the means by which the state can exercise its authority to concur with or deny a section 301(h) decision made by the EPA Regional Office.

The information covered by this information collection request involves treatment plant operating data, effects of POTWs' discharges on marine environments, and states' viewpoints on issues concerning effects of discharges from POTWs on marine environments. None of this information is confidential; thus confidentiality is not an issue.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 652 hours per response for POTWs and 86 hours per response for states. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 50.

Frequency of response: The frequency of response varies from once every five years, to case-by-case, depending on the category of information.

Estimated total average number of responses for each respondent: This varies from once every five years, to case-by-case, depending on the category of information.

Estimated total annual burden hours: 61,377 hours.

Estimated total annual costs: $1.3 million. This includes an estimated burden cost of $1.3 million and an estimated cost of $0 for capital investment or maintenance and operational costs. The average annual reporting burden varies depending on the size of the respondent and the category of the information collection.

Are There Changes in the Estimates From the Last Approval?

There will be a decrease in hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects EPA's estimate of a decrease in the number of respondents, with a corresponding decrease in the total estimated respondent burden. The new revised estimates will be presented when the final ICR package is submitted to OMB review and approval. This change is an adjustment.

What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: December 19, 2008.

Craig E. Hooks,

Director, Office of Wetlands, Oceans and Watersheds.

[FR Doc. E8–30817 Filed 12–24–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0899; FRL–8757–5]

Agency Information Collection Activities; Proposed Collection; Comment Request; NSPS for Stationary Compression Ignition Internal Combustion Engines; EPA ICR Number 2196.03, OMB Control Number 2060–0590

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on August 31, 2009.

DATES: Comments must be submitted on or before February 27, 2009.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–HQ–OECA–2008–0899 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: docket.oeca@epa.gov*.
- *Fax:* (202) 566–1511.
- *Mail:* Enforcement and Compliance Docket and Information Center (ECDIC), Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode: 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* Enforcement and Compliance Docket and Information Center (ECDIC), Environmental Protection Agency, EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Deliveries are only accepted during the Docket Center's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID Number EPA–HQ–OECA–2008–0899. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Learia Williams; Compliance Assessment and Media Programs Division, Environmental Protection Agency, Mailcode 2223A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number, (202) 564–4113; fax number (202) 564–0050; or via e-mail to *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID Number EPA–HQ–OECA–2008–0899 which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for Enforcement and Compliance Docket is (202) 566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of

the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Particular Information Is of Interest to EPA?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When Preparing Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under DATES.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

To What Information Collection Activity or ICR Does This Apply?

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following ICR for renewal: NSPS for Stationary Compression Ignition Internal Combustion Engines; EPA ICR Number 2196.03, OMB Control Number 2060–0590; Docket ID Number EPA–HQ–OECA–2008–0899.

Affected entities: Entities potentially affected by this action are facilities with stationary compression internal combustion engines.

Title: NSPS for Stationary Compression Ignition Internal Combustion Engines (40 CFR Part 60, Subpart IIII).

ICR numbers: EPA ICR Number 2196.03, OMB Control Number 2060–0590.

ICR status: This ICR is currently scheduled to expire on August 31, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart IIII.

Owners or operators of the affected facilities must make an initial notification and keep records related to engine performance.

Burden Statement: The existing ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized below. The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately one hour per response.

Estimated Number of Respondents: 152,546.

Frequency of Response: Initially.

Estimated Total Annual Hour Burden: 152,733.

Estimated Total Annual Cost: $242,000, which is comprised of no annualized capital/startup costs and O&M costs of $242,000.

Are There Changes in the Estimates from the Last Approval?

It is anticipated that the number of respondents will increase to approximately 210,000 for this ICR due to full implementation of the standard so that it covers all affected entities. The existing ICR uses the average number of respondents during the initial period of implementation.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: December 16, 2008.

Lisa Lund,

Director, Office of Compliance.

[FR Doc. E8–30821 Filed 12–24–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8588–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2008 (73 FR 19833).

Draft EISs

EIS No. 20080297, ERP No. D–IBR–K65345–CA, Lake Casitas Resource Management Plan (RMP), Implementation, Cities of Los Angeles and Ventura, Western Ventura County, CA.

Summary: EPA expressed environmental concerns about impacts to environmental resources and impacts from noise. Rating EC2.

EIS No. 20080357, ERP No. D–FRC–K05066–CA, Big Creek Hydro Project (FERC Nos. 67, 120, 2085, and 2175) Proposes to Relicenses, Big Creek Nos. 2A, 8 and Eastwood—FERC No. 67; Big Creek Nos. 1 and 2—FERC No. 2175; Mammoth Pool—FERC No. 2085 and Big Creek No. 3 FERC No. 120, Fresno and Madera Counties, CA.

Summary: EPA expressed environmental concerns about impacts related to construction activities. EPA requested additional information on the impacts of climate change on the project and the analysis of cumulative impacts. Rating EC2.

EIS No. 20080398, ERP No. D–NIH–J81013–MT, Rocky Mountain Laboratories (RML) Master Plan, Implementation, Hamilton, Ravalli County, MT.

Summary: EPA expressed environmental concerns about air quality, environmental justice and safety/security impacts. Rating EC2.

EIS No. 20080409, ERP No. D–COE–J11025–CO, Fort Carson Grow the Army Stationing Decision, Constructing New Facilities to Support Additional Soldiers and their Families, Portions of El Paso, Pueblo and Fremont Counties, CO.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20080432, ERP No. D–COE–G39051–LA, Mississippi River-Gulf Outlet (MRGO), Louisiana, and Lake Borgne Wetland Creation and Shoreline Protection Project, Proposes to Construct Shoreline Protection Features Along the Lake Borgne Shoreline to Restore and Nourish Wetlands, Lake Borgne, LA.

Summary: EPA expressed environmental concerns about water quality and sediment budget impacts. Rating EC2.

EIS No. 20080464, ERP No. DS–AFS–F65062–MN, Echo Trail Area Forest Management Project, Updated Information to Amend to Further Address Water Quality and Watershed Health, Superior National Forest, Lacroix Ranger District and Kawishiwi Ranger District, St. Louis and Lake Counties, MN.

Summary: EPA does not object to the proposed action. Rating LO.

Final EISs

EIS No. 20080351, ERP No. F–SFW–K99039–NV, Coyote Spring Investment Multispecies Conservation Plan, Issuing a 40-year Incidental Take Permit for Five Species, Clark and Lincoln Counties, NV.

Summary: EPA expressed environmental concerns about groundwater planning and impacts to biological resources.

EIS No. 20080373, ERP No. F–FHW–E40339–NC, NC 12 Replacement of Herbert C. Bonner Bridge (Bridge No. 11) Revisions and Additions, over Oregon Inlet Construction, Funding, U.S. Coast Guard Permit, Special-Use-Permit, Right-of-Way Permit, U.S. Army COE Section 10 and 404 Permits, Dare County, NC.

Summary: EPA continues to have environmental concerns about building additional bridges through a national wildlife refuge and national seashore and the related water quality and migratory bird impacts.

EIS No. 20080452, ERP No. F–GSA–D80032–DC, Department of Homeland Security Headquarters at the St. Elizabeths West Campus, To Consolidate Federal Office Space on a Secure Site, Washington, DC.

Summary: EPA continues to have environmental concerns about the East Campus resource impacts.

EIS No. 20080454, ERP No. F–OSM–K65321–00, Black Mesa Project, Revisions to the Life-of-Mine Operation and Reclamation for the Kayenta and Black Mesa Surface-Coal Mining Operations, Right-of-Way Grant, Mohave, Navajo, Coconino and Yavapai Counties, AZ and Clark County, NV.

Summary: EPA does not object to this project.

EIS No. 20080457, ERP No. F–APH–A82128–00, PROGRAMMATIC—Use of Genetically Engineered Fruit Fly and Pink Bollworm in APHIS Plant Pest Control Programs, Implementation.

Summary: EPA does not object to the proposed action.

EIS No. 20080458, ERP No. F–COE–K39113–CA, Natomas Levee Improvement Project, Issuing of 408 Permission and 404 Permit, Sacramento Area Flood Control Agency, Sutter and Sacramento, CA.

Summary: EPA continues to have environmental concerns with the residual flood risk to development in a floodplain protected by levees, and indirect and cumulative environmental effects. We recommended the ROD describe how future development will not compromise the flood-risk-reduction achievements of this project or constrain flood protection management; and how future development adheres to, and does not undermine, the Natomas Basin Habitat Conservation Plan. EPA recommended implementation of the Natomas Basin flood safety plan prior to additional development, when feasible.

EIS No. 20080463, ERP No. F–FAA–G52000–NM, Spaceport America Commercial Launch Site, Proposal to Develop and Operate, Issuance of License, Sierra County, NM.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20080466, ERP No. F–USN–A11081–00, Introduction of the P–8A MMA into the U.S. Navy Fleet, To Provide Facilities and Functions that Support the Homebasing of 12 P–8A Multi-Mission Maritime Aircraft (MMA) Fleet Squardrons (72 Aircraft) and one Fleet Replacement Squadron (FRS), which include the Following Installations: Naval Air Station Jacksonville, FL; Naval Air Station Whidbey Island, WA; Naval Air Station North Island, CA; Marine Corps Base HI and Kaneohe Bay, HI.

Summary: EPA does not object to the proposed action.

EIS No. 20080492, ERP No. F–NPS–F65070–MI, Sleeping Bear Dunes National Lakeshore, General Management Plan and Wilderness Study, Implementation, Benzie and Leelanau Counties, MI.

Summary: EPA does not object to the proposed action. We recommend that the Record of Decision discuss possible negative effects of allowing electric motors on some inland lakes.

EIS No. 20080498, ERP No. F–NOA–K90031–CA, Channel Islands National Marine Sanctuary Management Plan, Implementation, Santa Barbara and Ventura Counties, CA.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20080459, ERP No. FS–COE–K35044–CA, Berth 136–147 [TraPac] Container Terminal Project, Updated Information on the Draft General Conformity Determination, Upgrade Existing Wharf Facilities, Install a Buffer Area between the Terminal and Community, U.S. Army COE Section 10 and 404 Permit, West Basin Portion of the Port of Los Angeles, CA.

Summary: No formal comment letter was sent to the preparing agency.

Dated: December 22, 2008.

Clifford Rader,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E8–30909 Filed 12–24–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8588–8]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly Receipt of Environmental Impact Statements Filed 12/15/2008 Through 12/19/2008 Pursuant to 40 CFR 1506.9

Due to the closing of Executive Departments and Agencies of the Federal Government on 12/26/2008, this Notice of Availability is being published on 12/29/2008. Comment and Wait Periods will be calculated from 12/29/2008.

EIS No. 20080527, Draft EIS, AFS, CA, Modoc National Forest Motorized Travel Management Plan, Implementation, National Forest Transportation System (NFTS), Modoc, Lassen and Siskiyou Counties, CA, Comment Period Ends: 02/11/2009, Contact: Kathleen Borovac 530–233–8754.

EIS No. 20080528, Draft EIS, USN, 00, Northwest Training Range Complex (NWTRC), To Support and Conduct Current, Emerging, and Future Training and Research, Development, Test and Evaluation (RDT&E) Activities, WA, OR and CA, Comment Period Ends: 02/11/2009, Contact: Kimberly Kler 360–396–0927.

EIS No. 20080529, Draft EIS, FHW, CT, North Hillside Road Extension on the University of Connecticut Storrs Campus, Hunting Lodge Road, U.S. Army COE Section 404 Permit, in the town Mansfield, CT, Comment Period Ends: 02/13/2009, Contact: Bradley D. Keaqer 860–659–6703 Ext 3009.

EIS No. 20080530, Draft EIS, MMS, AK, Beaufort Sea and Chukchi Sea Planning Areas, Proposals for Oil and Gas Lease Sales 209, 212, 217, and 221, Offshore Marine Environment, Beaufort Sea Outer Continental Shelf, and North Slope Borough of Alaska, Comment Period Ends: 03/16/2009, Contact: Keith Gordon 907–334–5265.

EIS No. 20080531, Draft EIS, USN, WA, Naval Base Kitsap—Bangor, Construct and Operate a Swimmer Interdiction Security System (SISS), Silverdatle Kitsap County, WA, Comment Period Ends: 03/02/2009, Contact: Shannon Kasa 619–553–3889.

EIS No. 20080532, Draft EIS, AFS, CO, Vail Ski Area's 2007 Improvement Project, Addressing Issues Related to the Lift and Terrain Network, Skier Circulation, Snowmaking Coverage, Guest Services Facilities, Special-Use-Permit, Eagle/Holy Cross Ranger District, White River National Forest, Eagle County, CO, Comment Period Ends: 02/11/2009, Contact: Roger Poirier 970–945–3266.

EIS No. 20080533, Draft EIS, AFS, CA, Plumas National Forest Public Motorized Travel Management, Implementation, Plumas National Forest, Plumas County, CA, Comment Period Ends: 02/11/2009, Contact: Jane Beaulieu 530–283–7742.

EIS No. 20080534, Final EIS, IBR, WA, Yakima River Basin Water Storage Feasibility Study, Create Additional Water Storage, Benton, Yakima, Kittitas Counties, WA, Wait Period Ends: 01/27/2009, Contact: David Kaumheimer 509–575–5848 Ext. 612.

Amended Notices

EIS No. 20070327, Draft EIS, FTA, TX, Withdrawn—Denton to Carrollton Regional Rail Corridor Project, Transportation Improvements between Downtown Denton and the Dallas Area Rapid (DART) System, Right-of-Way Grant, Denton and Dallas Counties, TX, Contact: Robert C. Patrick 817–978–0550. Revision to FR Notice Published 08/03/2007: Officially Withdrawn by the Filing Agency.

EIS No. 20080480, Draft EIS, USN, NJ, Laurelwood Housing Area, Access at Naval Weapons Station Earle, Lease Agreement, Monmouth County, NJ, Comment Period Ends: 01/23/2009, Contact: Kim Joyner-Barty 757–322–8473. Revision to FR Notice Published 11/28/2008: Extending Comment Period from 01/12/2009 to 01/23/2009.

Dated: December 22, 2008.

Clifford Rader,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E8–30908 Filed 12–24–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8757–3, EPA–HQ–OW–2008–0055]

Final National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges Incidental to the Normal Operation of a Vessel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA Regions 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 are finalizing an NPDES Vessel General Permit (VGP) to cover discharges incidental to the normal operation of vessels. This action is in response to a District Court ruling that vacates, as of December 19, 2008, a long-standing EPA regulation that excludes discharges incidental to the normal operation of a vessel from the need to obtain an NPDES permit. As of December 19, 2008, discharges incidental to the normal operation of a vessel that had formerly been exempted from NPDES permitting by the regulation will be subject to the prohibition in CWA Section 301(a) against the discharge of pollutants without a permit.

EPA solicited information and data on discharges incidental to normal vessel operations to assist in developing two NPDES general permits in a **Federal Register** Notice published June 21, 2007 (72 FR 32421). The majority of information and data in response to that notice came from seven different groups: Individual citizens, commercial fishing representatives, commercial shipping groups, environmental or outdoor recreation groups, the oil and gas industry, recreational boating-related businesses, and state governments. EPA considered all the information and data received along with other publicly available information in developing two proposed vessel permits.

EPA published the two proposed permits and accompanying fact sheets for public comment on June 17, 2008 (73 FR 34296). As proposed, the VGP would have covered all commercial and non-recreational vessels and those recreational vessels longer or equal to 79 feet, and the proposed RGP would have covered recreational vessels less than 79 feet in length. However, after the permits were proposed, Congress enacted two new laws that impact the universe of vessels covered under today's permit. On July 29, 2008, Senate bill S. 2766 (''the Clean Boating Act of 2008'') was signed into law (Pub. L. 110–288). This law provides that recreational vessels shall not be subject to the requirement to obtain an NPDES permit to authorize discharges incidental to their normal operation. As a result of this legislation, EPA is not finalizing the proposed recreational vessel NPDES permit and has also modified the VGP, which included those recreational vessel over 79 feet, to eliminate that coverage. On July 31, 2008, Senate bill S. 3298 was signed into law (Pub. L. 110–299). This law generally imposes a two-year moratorium during which time neither EPA nor states can require NPDES permits for discharges (except ballast

water discharges) incidental to the normal operation of vessels of less than 79 feet and commercial fishing vessels of any length. EPA is not taking final action on the proposed permit as it would apply to these vessels and has revised the final VGP to reflect the new law.

DATES: This permit is effective December 19, 2008. This effective date is necessary to provide affected vessels the necessary permit coverage under the Clean Water Act in light of the vacatur of the 40 CFR 122.3(a) NPDES permitting exemption. EPA notes that on December 18, 2008, a motion was filed with the U.S. District Court for the Northern District of California seeking a delay of vacatur of the 40 CFR 122.3(a) exclusion from NPDES permitting until February 6, 2009. As of the time today's notice was ready for signature, the Court had not taken action on that motion; thus, EPA could not adjust the effective date of the permit to coincide with a new vacatur date. EPA advises that should the court grant the motion to delay the vacatur date, the effective date of today's permit will not change. In addition, compliance dates for those permit provisions that require compliance at some explicit amount of time after the effective date will not be extended, regardless of whether the Court delays vacatur of the exclusion. However, because permit authorization is not required until vacatur of the 40 CFR 122.3(a) permitting exclusion occurs, the regulated community need not comply with the terms of today's permit until the date of vacatur ordered by the Court.

In accordance with 40 CFR Part 23, this permit shall be considered issued for the purpose of judicial review on the day 2 weeks after **Federal Register** Publication. Under section 509(b) of the Clean Water Act, judicial review of this general permit can be had by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of notices of intent are provided in Part 1.5 of the VGP. This permit also provides additional dates for compliance with the terms of these permits.

FOR FURTHER INFORMATION CONTACT: For further information on this final vessel NPDES general permit, contact Ryan Albert at EPA Headquarters, Office of Water, Office of Wastewater Management, Mail Code 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; or at tel. 202–564–0763; or Juhi Saxena at EPA Headquarters, Office of Water, Office of Wastewater Management, Mail Code 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; or at tel. 202–564–0719; or e-mail: *CommercialVesselPermit@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Final Permit Apply To Me?

This action applies to all vessels operating in a capacity as a means of transportation, except recreational vessels as defined in CWA section 502(25), Public Law 110–288, that have discharges incidental to their normal operations into waters subject to this permit. With respect to (1) commercial fishing vessels of any size as defined in 46 U.S.C. 2101 and (2) those non-recreational vessels that are less than 79 feet in length, the coverage under this permit is limited to ballast water discharges only. Unless otherwise excluded from coverage by Part 6 of the permit, waters subject to this permit, means waters of the U.S. as defined in 40 CFR 122.2.

B. How Can I Get Copies of These Documents and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OW–2008–0055 VGP. The official public docket is the collection of materials, including the administrative record, for the final permit, required by 40 CFR 124.18. It is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Although all documents in the docket are listed in an index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available electronically through *http://www.regulations.gov* and in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Water Docket is (202) 566–2426. In addition, the comments and information that EPA received in response to its June 21, 2007, **Federal Register** notice can be found in the public docket at *http://www.regulations.gov* by searching Docket ID No. EPA–HQ–OW–2007–0483.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through the Federal Docket Management System (FDMS) found at *http://www.regulations.gov.* You may use the FDMS to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once at the Web site, enter the appropriate Docket ID No. in the ''Search'' box to view the docket.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.A.1.

Response to public comments. EPA received 173 comments on the proposed VGP from the shipping industry (108), States (28), Environmental Groups and the public (37). EPA has responded to all comments received and has included these responses in a separate document in the public docket for this permit. See the document titled *Proposed VGP: EPA's Response to Public Comments.*

C. Public Outreach: Public Hearing and Public Meetings, Webcast

Because EPA anticipated a significant degree of public interest in the draft permit, EPA held a public hearing Monday, July 21, 2008, to receive public comment and answer questions concerning the proposed permit. In addition, EPA and the U.S. Coast Guard co-hosted three (3) public meetings on Thursday, June 19, 2008, in Washington, DC; Tuesday, June 24, 2008, in Portland, OR; and Thursday, June 26, 2008, in Chicago, IL; to present the proposed requirements of the VGP and the basis for those requirements, as well as to answer questions concerning the proposed permit. The public meetings and public hearing were attended by a wide variety of

stakeholders including representatives from industry, government agencies, and environmental organizations.

In addition, EPA held a Webcast on July 2, 2008, to provide information on the proposed permits and to answer questions from interested parties that were unable to attend the public meetings or hearing.

D. Who Are the EPA Regional Contacts for This Proposed Permit?

For EPA Region 1, contact Sara Green at USEPA REGION 1, 1 Congress Street, Suite 1100, Mail Code: CIP, Boston, MA 02114–2023; or at tel.: (617) 918–1574; or e-mail at *greene.sara@epa.gov.*

For EPA Region 2, contact James Olander at USEPA REGION 2, 290 Broadway, New York, NY 10007–1866; or at tel.: (212) 637–3833; or e-mail at *olander.james@epa.gov.*

For EPA Region 3, contact Mark Smith at USEPA REGION 3, 1650 Arch Street, Mail Code: 3WP41, Philadelphia, PA 19103–2029; or at tel.: (215) 814–3105; or e-mail at *smith.mark@epa.gov.*

For EPA Region 4, contact Marshall Hyatt at USEPA REGION 4, 61 Forsyth Street, SW., Atlanta, GA 30303–8960; or at tel.: (404) 562–9304; or e-mail at *hyatt.marshall@epa.gov.*

For EPA Region 5, contact Sean Ramach at USEPA REGION 5, 77 West Jackson Boulevard, Mail Code: WN–16J, Chicago, IL 60604–3507; or at tel.: (312) 886–5284; or e-mail at *ramach.sean@epa.gov.*

For EPA Region 6, contact Paul Kaspar at USEPA REGION 6, 1445 Ross Avenue, Suite 1200, Mail Code: 6WQPP, Dallas, TX 75202–2733; or at tel.: (214) 665–7459; or e-mail at *kaspar.paul@epa.gov.*

For EPA Region 7, contact Alex Owutaka at USEPA REGION 7, 901 North Fifth Street, Mail Code: WWPDWIMB, Kansas City, KS 66101; or at tel: (913) 551–7584; or e-mail at *owutaka.alex@epa.gov.*

For EPA Region 8, contact Sandy Stavnes, at USEPA REGION 8, 1595 Wynkoop St., Mail Code: 8P–W–WW, Denver, CO 80202–1129; or at tel: (303) 312–6117; or e-mail at *stavnes.sandra@epa.gov.*

For EPA Region 9, contact Eugene Bromley at USEPA REGION 9, 75 Hawthorne Street, Mail Code: WTR–5, San Francisco, CA 94105; or at tel.: (415) 972–3510; or e-mail at *bromley.eugene@epa.gov.*

For EPA Region 10, contact Cindi Godsey at USEPA Region 10—Alaska Operations Office, Federal Building Room 537, 222 West 7th Avenue #19, Mail Code: AOO/A, Anchorage, AK 99513–7588; or at tel.: (907) 271–6561; or e-mail at *godsey.cindi@epa.gov.*

II. Statutory and Regulatory History

A. The Clean Water Act

Section 301(a) of the Clean Water Act (CWA) provides that ''the discharge of any pollutant by any person shall be unlawful'' unless the discharge is in compliance with certain other sections of the Act. 33 U.S.C. 1311(a). The CWA defines ''discharge of a pollutant'' as ''(A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.'' 33 U.S.C. 1362(12). A ''point source'' is a ''discernible, confined and discrete conveyance'' and includes a ''vessel or other floating craft.'' 33 U.S.C. 1362(14).

The term ''pollutant'' includes, among other things, ''garbage * * * chemical wastes * * * and industrial, municipal, and agricultural waste discharged into water.'' The Act's definition of ''pollutant'' specifically excludes ''sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces'' as defined in Clean Water Act section 312. 33 U.S.C. 1362(6). One way a person may discharge a pollutant without violating the section 301 prohibition is by obtaining a section 402 National Pollutant Discharge Elimination System (NPDES) permit (33 U.S.C. 1342). Under section 402(a), EPA may ''issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a)'' upon certain conditions required by the Act.

B. The History of the Exclusion of Vessels From the NPDES Program

Less than one year after the CWA was enacted, EPA promulgated a regulation that excluded discharges incidental to the normal operation of vessels from NPDES permitting. 38 FR 13528, May 22, 1973. After Congress re-authorized and amended the CWA in 1977, EPA invited another round of public comment on the regulation. 43 FR 37078, August 21, 1978. In 1979, EPA promulgated the final revision that established the regulation largely in its current form. 44 FR 32854, June 7, 1979. The regulation identifies several types of vessel discharges as being subject to NPDES permitting, but specifically excludes discharges incidental to the normal operation of a vessel.

> The following discharges do not require NPDES permits:
>
> (a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or waters of the United States for the purpose of mineral or oil exploration or development. 40 CFR 122.3(a).

Although other subsections of 40 CFR 122.3 and its predecessor were the subject of legal challenges (*See NRDC* v. *Costle,* 568 F.2d 1369 (D.C. Cir. 1977)), following its promulgation, the regulatory text relevant to discharges incidental to the normal operation of vessels went unchallenged at that time, and has been in effect ever since.

C. The Legal Challenge

In December 2003, the long-standing exclusion of discharges incidental to the normal operation of vessels from the NPDES program became the subject of a lawsuit in the U.S. District Court for the Northern District of California. The lawsuit arose from a January 13, 1999, rulemaking petition submitted to EPA by a number of parties concerned about the effects of ballast water discharges. The petition asked the Agency to repeal its regulation at 40 CFR 122.3(a) that excludes certain discharges incidental to the normal operation of vessels from the requirement to obtain an NPDES permit. The petition asserted that vessels are ''point sources'' requiring NPDES permits for discharges to U.S. waters; that EPA lacks authority to exclude point source discharges from vessels from the NPDES program; that ballast water must be regulated under the NPDES program because it contains invasive plant and animal species as well as other materials of concern (*e.g.*, oil, chipped paint, sediment and toxins in ballast water sediment); and that enactment of CWA section 312(n) (Uniform National Discharge Standards, also known as the UNDS program) demonstrated Congress' rejection of the exclusion.

In response to the 1999 petition, EPA first prepared a detailed report for public comment, *Aquatic Nuisance Species in Ballast Water Discharges: Issues and Options* (September 10, 2001). *See,* 66 FR 49381, September 27, 2001. After considering the comments received, EPA declined to reopen the exclusion for additional rulemaking, and denied the petition on September 2, 2003. EPA explained that since enactment of the CWA, EPA has consistently interpreted the Act to provide for NPDES regulation of

discharges from industrial operations that incidentally occur onboard vessels (*e.g.*, seafood processing facilities or oil exploration operations at sea) and of discharges overboard of materials such as trash, but not of discharges incidental to the normal operation of a vessel (*e.g.*, ballast water) subject to the 40 CFR 122.3(a) exclusion. EPA further explained that Congress had expressly considered and accepted the Agency's regulation in the years since its promulgation, and that Congress chose to regulate discharges incidental to the normal operation of vessels through programs other than CWA section 402 permitting. Thus, it was EPA's understanding that Congress had acquiesced to EPA's long-standing interpretation of how the CWA applied to vessels. Denial of the petition did not reflect EPA's dismissal of the significant impacts of aquatic invasive species, but rather the understanding that other programs had been enacted to specifically address the issue and that the CWA does not currently provide an appropriate framework for addressing ballast water and other discharges incidental to the normal operation of non-military vessels.

In the denial of the petition, EPA noted that when Congress specifically focused on the problem of aquatic nuisance species in ballast water, it did not look to or endorse the NPDES program as the means to address the problem. Instead, Congress enacted new statutes which directed and authorized the Coast Guard, rather than EPA, to establish a regulatory program for discharges incidental to the normal operation of vessels, including ballast water (*i.e.*, Nonindigenous Aquatic Nuisance Prevention and Control Act as amended, 16 U.S.C. 4701 *et seq.*; Act to Prevent Pollution from Ships, 33 U.S.C. 1901 *et seq.*). Furthermore, Congress made no effort to legislatively repeal EPA's interpretation of the NPDES program or to expressly mandate that discharges incidental to the normal operation of vessels be addressed through the NPDES permitting program. EPA reasoned that this Congressional action and inaction in light of Congress' awareness of the regulatory exclusion confirmed that Congress accepted EPA's interpretation and chose the Coast Guard as the lead agency under other statutes.

In addition, EPA found significant practical and policy reasons not to re-open the longstanding CWA regulatory exclusion, reasoning that there are a number of ongoing activities within the Federal government related to control of invasive species in ballast water, many of which are likely to be more effective and efficient than use of NPDES permits under the CWA. EPA also noted that nothing in the CWA prevents states from independently regulating ballast water discharges under State law, should they choose to do so, pursuant to CWA section 510.

After EPA's September 2003 denial of the petition, a number of groups filed a complaint in the U.S. District Court for the Northern District of California. The complaint was brought pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.*, and set out two causes of action. First, the complaint challenged EPA's promulgation of 40 CFR 122.3(a), an action the Agency took in 1973. The second cause of action challenged EPA's September 2003 denial of their petition to repeal the Sec. 122.3(a) exclusion.

D. District Court Decision

In March 2005, the Court determined that the exclusion exceeded the Agency's authority under the CWA. Specifically, in March 2005 the Court granted summary judgment to the plaintiffs:

> The Court DECLARES that EPA's exclusion from NPDES permit requirements for discharges incidental to the normal operation of a vessel at 40 CFR 122.3(a) is in excess of the Agency's authority under the Clean Water Act * * *.

Northwest Envtl. Advocates v. *United States EPA,* 2005 U.S. Dist. LEXIS 5373 (N.D. Cal. 2005). After this ruling, the Court granted motions to intervene on behalf of the Plaintiffs by the States of Illinois, New York, Michigan, Minnesota, Pennsylvania, and Wisconsin, and on behalf of the Government-Defendant by the Shipping Industry Ballast Water Coalition.

Following submission of briefs and oral argument by the parties and interveners on the issue of a proper remedy, the Court issued a final order in September 2006 providing that:

> The blanket exemption for discharges incidental to the normal operation of a vessel, contained in 40 CFR 122.3(a), shall be vacated as of September 30, 2008.

Northwest Envtl. Advocates v. *United States EPA,* 2006 U.S. Dist. LEXIS 69476 (N.D. Cal. Sept. 18, 2006).

EPA filed an appeal in the U.S. Court of Appeals for the Ninth Circuit, and on July 23, 2008, the Court upheld the District Court's decision, leaving the September 30, 2008 vacatur date intact. *Northwest Envtl. Advocates* v. *EPA* 537 F.3d 1006 (9th Cir. 2008). EPA subsequently petitioned the District Court to extend the date for vacatur of the 40 CFR 122.3(a) exclusion to December 19, 2008, and the District Court granted this request. *Northwest NW. Envt'l Advocates et al.* v. *United States EPA,* 2008 U.S. Dist. LEXIS 66738 (N.D. Cal. August 31, 2008)

This means that, effective December 19, discharges incidental to the normal operation of vessels currently excluded from NPDES permitting by that regulation will become subject to CWA section 301's discharge prohibition, unless covered under an NPDES permit. The CWA authorizes civil and criminal enforcement for violations of that prohibition and also allows for citizen suits against violators.

Additional material related to the lawsuit is contained in the docket accompanying these proposed permits and fact sheets.

III. Scope and Applicability of the 2008 VGP

A. CWA Section 401 Certification and Coastal Zone Management Act Concurrence

EPA may not issue a permit authorizing discharges into the waters of a State until that State has granted certification under CWA section 401 or has waived its right to certify (or been deemed to have waived). 33 U.S.C. 1341(a)(1); 40 CFR 124.53(a). For this permit, a State was deemed to have waived its right to certify if it did not exercise that right within 60 days from the date the State was notified of the draft permit, unless EPA granted that State more time to certify based on ''unusual circumstances.'' 40 CFR 124.53(c)(3). If a State believed that any permit condition(s) more stringent than those contained in the draft permit were necessary to meet the applicable requirements of either the CWA or State law, the State had an opportunity to include those condition(s) in its certification. 40 CFR 124.53(e)(1). A number of States provided such conditions in their certifications, and EPA has added them to the VGP pursuant to CWA section 401(d). 33 U.S.C. 1341(d).

Similarly, the EPA may not issue a general permit authorizing discharges into waters of a State if the State objects, in the case of this general permit, with EPA's National Consistency Determination, pursuant to the regulations implementing of the Coastal Zone Management Act (''CZMA''), specifically the regulations at 15 CFR 930.31(d) and 930.36(e). Several States provided conditions to the VGP, based on specific enforceable coastal policies of the State, which allowed the State to concur with EPA's consistency determination. According to the regulations, EPA incorporated these

conditions to the maximum extent practicable. If a State coastal zone management agency's conditions are not incorporated into the general permit or if the State coastal zone management agency objects to the general permit, then the general permit is not available for use by potential general permit users in that State unless the applicant who wants to use the general permit provides the State agency with the applicant's consistency determination and the State agency concurs. 15 CFR 930.31(d), NOAA has explained that ''a State objection to a consistency determination for the issuance of a general permit would alter the form of CZMA compliance required, transforming the general permit into a series of case by case CZMA decisions and requiring an individual who wants to use the general permit to submit an individual consistency certification to the State agency in compliance with 15 CFR part 930.'' 71 FR 788, 793. In States that have not provided conditions for incorporation into the permit to allow the State to concur, as well as States that have not objected to the permit, EPA's CZMA compliance requirements derive from CZMA section 307(c)(1). Id.

B. Geographic Coverage of VGP

The VGP applies to discharges incidental to the normal operation of a vessel identified as being eligible for coverage in the final permit, into waters subject to the permit. These waters are ''waters of the United States'' as defined in 40 CFR 122.2 (extending to the reach of the 3-mile territorial sea as defined in section 502(8) of the CWA). The final permit covers vessel discharges in the waters of the U.S. in all States, Territories and Indian Country Land, regardless of whether a ''state'' is otherwise authorized to implement the NPDES permit program within its jurisdiction. For more information on this approach, see the fact sheet accompanying the final permit.

As of the issuance date of this permit, the following jurisdictions have not yet granted, denied, waived (or been deemed to have waived) certifications pursuant to Section 401 of the Clean Water Act and/or final responses on the national consistency determination required by section 307(c)(1) of the Coastal Zone Management Act. Therefore, this permit does not yet provide coverage in the following jurisdictions:

- The State of Alaska
- The State of Hawaii

EPA will announce the availability of coverage under the VGP discharges in these jurisdictions in a separate **Federal Register** notice as soon as possible should it receive the appropriate 401 certifications or waivers, and/or final responses on the national consistency determination. In addition, the VGP is not effective in the Taos Pueblo Indian Country Land (New Mexico) because they have denied certification under CWA section 401.

C. Categories of Vessels Covered Under VGP

The final vessel general permit (VGP) applies to owners and operators of non-recreational vessels that are 79 feet (24.08 meters) and greater in length, as well as to owners and operators of commercial vessels of less than 79 feet and commercial fishing vessels of any length which discharge ballast water.

The final VGP does not apply to recreational vessels of any size, commercial fishing vessels of any size which do not discharge ballast water, and non-recreational vessels of less than 79 feet which do not discharge ballast water. For Commercial fishing vessels and non-recreational vessels of less than 79 feet in length that discharge ballast water, the only effluent limit these vessels are subject to are the VGP standards that apply to ballast water discharges.

D. Summary of VGP Terms and Requirements

The final VGP addresses 26 vessel discharge streams by establishing effluent limits, including Best Management Practices (BMPs), to control the discharge of the waste streams and constituents found in those waste streams. The discharge streams eligible for coverage under this final permit are: Deck washdown and runoff and above water line hull cleaning; bilge water; ballast water; anti-fouling leachate from anti-fouling hull coatings; aqueous film forming foam (AFFF); boiler/economizer blowdown; cathodic protection; chain locker effluent; controllable pitch propeller hydraulic fluid and thruster hydraulic fluid and other oil sea interfaces including lubrication discharges from paddle wheel propulsion, stern tubes, thruster bearings, stabilizers, rudder bearings, azimuth thrusters, and propulsion pod lubrication; distillation and reverse osmosis brine; elevator pit effluent; firemain systems; freshwater layup; gas turbine wash water; graywater; motor gasoline and compensating discharge; non-oily machinery wastewater; refrigeration and air condensate discharge; seawater cooling overboard discharge; seawater piping biofouling prevention; small boat engine wet exhaust; sonar dome discharge, underwater ship husbandry; welldeck discharges; graywater mixed with sewage from vessels; and exhaust gas scrubber wash water discharge.

For each discharge type, among other things, the final permit establishes effluent limits pertaining to the constituents found in the effluent, including BMPs designed to decrease the amount of constituents entering the waste stream. A vessel might not produce all of these discharges, but a vessel owner or operator is responsible for meeting the applicable effluent limits and complying with all the effluent limits for every listed discharge that the vessel produces.

Discharge Authorization Timeframe

To obtain authorization, the owner or operator of a vessel that is either 300 or more gross tons or has the capacity to hold or discharge more than 8 cubic meters (2113 gallons) of ballast water is required to submit a Notice of Intent (NOI) to receive permit coverage, beginning June 19, 2009, but no later than September 19, 2009. Until September 19, 2009 these vessels will be automatically authorized upon permit issuance to discharge according to the permit requirements. For vessels that were delivered to the owner or operator on or before September 19, 2009, the vessel will receive final permit coverage on the date that EPA receives the complete NOI. New vessels that are delivered after September 19, 2009 will receive permit coverage 30 days after EPA receives the complete NOI. When ownership of a vessel previously authorized to discharge under this permit is transferred to a new owner, the discharge authorization date is the later of the date EPA receives an NOI from the new owner or the date of transfer. In the case of an existing vessel which was not previously authorized to discharge under this permit, delivered to the owner after September 19, 2009, the discharge authorization date is 30 days after EPA receives the complete NOI.

Vessels that are less than 300 gross tons or are able to carry or discharge no more than 8 cubic meters of ballast water capacity will be automatically authorized upon permit issuance to discharge according to the permit requirements.

Monitoring and Reporting

The VGP requires routine self-inspection and monitoring of all areas of the vessel that the permit addresses. The routine self-inspection must be documented in the ship's logbook. Analytical monitoring is required for certain types of vessels. The VGP also requires comprehensive annual vessel

inspections, to ensure even the hard-to-reach areas of the vessel are inspected for permit compliance. If the vessel is placed in dry dock while covered under this permit, a dry dock inspection and report must be completed. Additional monitoring requirements are imposed on certain classes of vessels, based on unique characteristics not shared by other vessels covered under the VGP.

Vessel Type-Specific Requirements

The permit imposes additional requirements for 8 specific types of vessels which have unique characteristics resulting in discharges not shared by other types of vessels. These vessel types are medium cruise ships, large cruise ships, large ferries, barges, oil or petroleum tankers, research vessels, rescue boats, and vessels employing experimental ballast water treatment systems. The permit requirements are designed to address the discharges from features unique to those vessels, such as parking decks on ferries and overnight accommodations for passengers on cruise ships.

E. Summary of Significant Changes From Proposal to Final Permit

The final VGP differs from the proposed permit in several ways, the most significant of which are discussed below. These changes include modifying the graywater discharge requirements for existing medium cruise ships unable to voyage more than 1 nautical mile (nm) from shore, adding requirements for the discharge of pool and spa water from cruise ships, prohibiting the discharge of tetrachloroethylene degreasers, expanding the prohibition against discharge of Tributyltin to a prohibition against discharge of any organotin compounds, and the addition of whole effluent toxicity (WET) testing to the requirements for vessels employing a ballast water treatment system which discharge certain biocides. Other changes made include revising the universe of vessels eligible for coverage of the permit in response to two new laws (see Summary section above), combining three discharge categories into a new category that includes all oil to sea interfaces, modifying discharges and limits for large ferries, and additional clarifications added to several cruise ship discharges.

In addition to seeking public comment on all requirements of the proposed VGP, EPA specifically sought comment on several specific aspects of the VGP (for more detail on each element see the Permit Fact Sheet). The following sections summarize each topic for which EPA requested comment and what, if anything, EPA changed in the final VGP. For specific and full responses to public comment, please see the response to comments document included in the docket for this permit.

Tetrachloroethylene (TCE)

EPA sought information on whether uses of Tetrachloroethylene (TCE) other than dry cleaning should be explicitly included or excluded from permit coverage. EPA was also interested in comments on the frequency and nature of the use of TCE-containing products on vessels. (TCE discharges associated with dry-cleaning activities on vessels were not proposed to be eligible for coverage because they are not considered to be incidental to the normal operation of a vessel).

Based on public comments received, discharges of TCE degreasers and other TCE containing products were made ineligible for coverage under the permit.

Notice of Intent (NOI) Requirements

EPA specifically requested comment on the approach for requiring NOIs from vessels. Comments received on this topic were split, with some in favor of the proposed requirements, and some recommending changes. The most concern was raised over unmanned barges and the difficulty of submitting NOIs for an entire fleet of vessels. EPA acknowledges these comments and is attempting to make its e-NOI system as user friendly as possible. The Agency intends to consider the needs of users who must fill in multiple forms when designing the electronic system. The e-NOI is expected to be operational six months from the date of permit issuance (June 19, 2009).

Additionally, based on public comment noting that most regulations were changing to use ''gross ton'' instead of ''gross registered ton'' as a unit for regulation, EPA has changed the NOI requirements to require an NOI from those vessels of more than 300 gross tons, rather than 300 gross registered tons. Vessels that have the ability to hold or discharge more than 8 cubic meters of ballast are also required to submit an NOI. The majority of commenters supported EPA's decision to require NOIs of only a subset of vessels covered by the permit.

Numeric Discharge Limits in Place of Best Management Practices (BMPs)

EPA specifically requested comment on whether the permit should establish numeric discharge limits for any of those discharges for which the proposed permit would have solely imposed best management practices (BMPs). The proposed permit included numeric discharge limits for graywater from cruise ships; oily discharges, including oily mixtures; and residual biocide limits from vessels utilizing experimental ballast water treatment systems. For the remainder of the discharges incidental to the normal operation of vessels, the proposed permit would have imposed BMPs, based on EPA's conclusion that numeric effluent limitations are not feasible for vessel discharges in this permit iteration. EPA requested that if commenters provide suggested numeric limits, that they should also provide any supporting data that identifies technologies or BMPs available to meet those limits, and if those limits are more stringent than requirements of the proposed permit, provide the costs and non-water quality impacts of setting those limits, and any other relevant information that would be helpful in setting those limits.

While several commenters recommended establishing numeric limits for more discharges than were included in the proposed permit, EPA has not added additional numeric limits except for experimental ballast water treatment discharges and for Pool and Spa discharges (see section titled ''Operational Limits for Large Cruise Ships'' below for discussion about Pool and Spa discharges). In the proposal for this general permit, EPA specifically requested comment on whether whole effluent toxicity (''WET'') tests should be used in addition to, or in lieu of, analytical monitoring of residual biocides and derivatives and if so, what appropriate toxicity-based endpoints might be used for this purpose. Based on public comment, the final VGP establishes WET testing, as a requirement for VGP coverage for ballast water treatment systems using biocides, or which have derivatives from such biocides, for which there are not acute water quality criteria. This approach is based on existing EPA WET methods and WET testing for ballast water discharges adopted by the State of Washington, and relies primarily on the methods specified in 40 CFR Part 136. The principal public comment on WET referenced the Washington State WET testing provisions for ballast water, which can be found at *http://www.ecy.wa.gov/pubs/9580.pdf,* appendix H. EPA used this manual as a reference in addition to WET tests consistent with past Agency practice (including Denton *et al.* 2007).

Several commenters noted that EPA should include numeric treatment standards for Ballast Water. EPA notes that although ballast water treatment technologies are not currently available

within the meaning of BAT under the CWA, such technologies are rapidly developing and might become ''available'' using a BAT standard within this permit term. EPA commits to continuing to review the evolution of ballast water treatment technologies and may, if appropriate, use the permit reopener in light of that evolution. See Part 4 of the VGP Fact Sheet for additional discussion. Additional discussion about ballast water discharge standards can be found in the fact sheet for this permit and in the response to comments document.

Bilgewater Discharges in Embayments

EPA requested comment on whether the permit should limit discharges of bilgewater in embayments, such as the Chesapeake Bay, for large vessels that regularly leave waters subject to the permit.

A few commenters recommended limiting discharges of bilgewater in embayments, but provided no additional information on which EPA could base such a decision. EPA notes that defining embayments is difficult and the information before the Agency does not demonstrate that there are available and economically achievable approaches for limiting such discharges in embayments. Hence, EPA has not specifically limited discharges of bilgewater in embayments. Nonetheless, other proposed requirements restricting discharge location and concentration for certain vessels remain in the permit. For instance, vessels greater than 400 gross tons, which regularly leave waters subject to the VGP, are subject to additional restrictions on the discharge of bilgewater, including a prohibition on the discharge of untreated bilgewater and restrictions when operating in the specially protected waters referenced in Part 12.1 of the permit, many of which may include bays and other similarly enclosed areas.

Saltwater Flushing for Vessels with Unpumpable Ballast Water and Residual Sediment

EPA requested comment on whether the requirement of mandatory saltwater flushing for all vessels with unpumpable ballast water and residual sediment which sail more than 200 nm (nautical mile) from any shore is appropriate.

Comments were received which both supported and opposed the mandatory saltwater flushing requirement. The final VGP retains the requirement for mandatory saltwater flushing for two classes of vessels: those defined as ocean-going vessels and those engaged in Pacific near shore voyages.

Ballast Water Exchange Requirements for Coastwise Trade Vessels on Atlantic and Gulf Coasts

EPA requested comment on whether ballast water exchange requirements similar to those proposed for Pacific near shore voyages should be applied to vessels engaged in coastwise trade on the Atlantic or Gulf Coasts that will discharge to waters subject to this permit. After considering the range of public comment on the issue, which both supported and opposed inclusion of Atlantic and Gulf ballast water exchange, EPA has not included Atlantic and Gulf nearshore ballast water exchange and saltwater flushing requirements. None of the commenters provided directly applicable data to support their views. EPA will, however, continue to investigate whether Atlantic and Gulf coast ballast water exchange is an appropriate best management practice for vessel owner/operators engaged in nearshore voyages. This exploration may include several elements such as examining vessel traffic and operation patterns along the Eastern and Gulf seaboards, the volume of ballast water transported and released, and the number of miles traveled by the average Atlantic and Gulf nearshore voyage.

Adequacy of the One-Time Report

EPA requested comment on whether the questions developed for the one-time report are appropriate and whether alternative or supplemental questions should be considered. The proposed permit would have required owner/operators to submit a one-time report that contains basic information about the vessel after the 30th month of permit coverage.

Many commenters suggested that the one-time report was an added burden on permittees and would not provide useful information to EPA while other commenters recommended requesting more information in the report and increasing the frequency of reporting. EPA has decided to retain the one-time report as it was proposed in the final VGP. EPA believes it will provide additional, useful information for future permit decisions without creating a substantial administrative burden on permittees.

Operational Limits for Large Cruise Ships

EPA requested comment on whether the proposed operational limits for large cruise ships are appropriate and whether the discharge standards proposed for within 1 nm of any shore should be extended to 3 nm from any shore, regardless of the speed of the vessel. For large cruise ships, the proposed permit would have prohibited the discharge of graywater within 1 nautical mile of shore unless the graywater has been treated to treatment standards in part 5.2.1.1.2 of the proposed permit. The proposed permit would also have required the discharge to either meet the effluent limits outlined in this proposed permit under Part 5.2.1.1.2 or be discharged while the vessel is moving at least 6 knots for discharges between 1 nm and 3 nm of shore.

Several commenters, primarily environmental groups, recommended extending the discharge standards to 3nm from any shore, regardless of the speed of the vessel, or to impose even more stringent limits on cruise ship discharges. Other commenters, including those from the cruise ship industry, commented that the permit should include the graywater treatment standards, but should not prohibit the discharge of treated graywater provided the discharge met those standards. EPA has clarified in the final permit that discharges of graywater are allowed within 1 nm of shore, provided that those discharges meet the standards in Parts 5.1 or 5.2 of the permit.

As part of comments received, several cruise ship representatives noted that they must discharge pool and spa water into waters subject to this permit. The commenters noted that they completely dechlorinate or debrominate this discharge as applicable. As a result of these comments, EPA has authorized the direct discharge of pool and spa water, provided it is dechlorinated and debrominated (as applicable), the vessel is underway at least 6 knots, and the permittee monitors the effluent before every discharge event. See Part 7.1 and 7.2 of the VGP fact sheet for additional discussion of these requirements.

Discharge of Untreated Graywater within 1nm of Shore or Nutrient Impaired Waters

EPA requested comment on whether the proposed prohibition on discharges of untreated graywater within 1 nm of shore for large and medium cruise ships, and into nutrient-impaired waters such as the Chesapeake Bay for large cruise ships, is appropriate and whether EPA's economic analyses are accurate.

Comments received on this issue were split, with commenters both supporting the prohibition on discharges of untreated graywater within 1nm of shore and nutrient impaired estuaries as well as opposing the requirements as too stringent or burdensome. Primarily, several comments raised concern about

certain medium cruise ships which are unable to travel more than 1nm from shore, whether due to geographic constraints, such as traveling on inland waters, or restrictions on the vessel based on the license issued by the U.S. Coast Guard. In response to these comments, the final permit changes the permit conditions for medium cruise ships that are unable to travel outside 1nm. Medium cruise ships constructed after the issuance of this permit must meet the same permit conditions as those that are able to travel outside 1nm from shore. Additionally, medium cruise ships which undergo a major renovation must also meet the same permit conditions as those able to travel more than 1 nm from shore.

Graywater Treatment Standards for Large Ferries

EPA requested comment on whether large ferries should be subject to additional graywater treatment standards similar to those proposed for medium and large cruise ships.

EPA received comments that both supported and opposed adding graywater treatment standards similar to the requirements for large cruise ships to the requirements for large ferries. No additional supporting data for either approach was submitted during the comment period. In the final permit, EPA has not altered the proposed permit requirements for large ferries.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The legal question of whether a general permit (as opposed to an individual permit) qualifies as a ''rule'' or as an ''adjudication'' under the Administrative Procedure Act (APA) has been the subject of periodic litigation. In a recent case, the court held that the CWA Section 404 Nationwide general permit before the court did qualify as a ''rule'' and therefore that the issuance of the general permit needed to comply with the applicable legal requirements for the issuance of a ''rule.'' *National Ass'n of Home Builders* v. *U.S. Army Corps of Engineers,* 417 F.3d 1272, 1284–85 (DC Cir.2005) (Army Corps general permits under Section 404 of the Clean Water Act are rules under the APA and the Regulatory Flexibility Act; ''Each NWP [nationwide permit] easily fits within the APA's definition 'rule' * * * As such, each NWP constitutes a rule * * * '').

As EPA stated in 1998, ''the Agency recognizes that the question of the applicability of the APA, and thus the RFA, to the issuance of a general permit is a difficult one, given the fact that a large number of dischargers may choose to use the general permit.'' 63 FR 36489, 36497 (July 6, 1998). At that time, EPA ''reviewed its previous NPDES general permitting actions and related statements in the **Federal Register** or elsewhere,'' and stated that ''[t]his review suggests that the Agency has generally treated NPDES general permits effectively as rules, though at times it has given contrary indications as to whether these actions are rules or permits.'' *Id.* at 36496. Based on EPA's further legal analysis of the issue, the Agency ''concluded, as set forth in the proposal, that NPDES general permits are permits [*i.e.* , adjudications] under the APA and thus not subject to APA rulemaking requirements or the RFA.'' *Id.* Accordingly, the Agency stated that ''the APA's rulemaking requirements are inapplicable to issuance of such permits,'' and thus ''NPDES permitting is not subject to the requirement to publish a general notice of proposed rulemaking under the APA or any other law * * * [and] it is not subject to the RFA.'' *Id.* at 36497.

However, the Agency went on to explain that, even though EPA had concluded that it was not legally required to do so, the Agency would voluntarily perform the RFA's small-entity impact analysis. *Id.* EPA explained the strong public interest in the Agency following the RFA's requirements on a voluntary basis: ''[The notice and comment] process also provides an opportunity for EPA to consider the potential impact of general permit terms on small entities and how to craft the permit to avoid any undue burden on small entities.'' *Id.* Accordingly, with respect to the NPDES permit that EPA was addressing in that **Federal Register** notice, EPA stated that ''the Agency has considered and addressed the potential impact of the general permit on small entities in a manner that would meet the requirements of the RFA if it applied.'' *Id.*

Subsequent to EPA's conclusion in 1998 that general permits are adjudications, rather than rules, as noted above, the DC Circuit recently held that nationwide general permits under section 404 are ''rules'' rather than ''adjudications.'' Thus, this legal question remains ''a difficult one'' (*supra*). However, EPA continues to believe that there is a strong public policy interest in EPA applying the RFA's framework and requirements to the Agency's evaluation and consideration of the nature and extent of any economic impacts that a CWA general permit could have on small entities (e.g., small businesses). In this regard, EPA believes that the Agency's evaluation of the potential economic impact that a general permit would have on small entities, consistent with the RFA framework discussed below, is relevant to, and an essential component of, the Agency's assessment of whether a CWA general permit would place requirements on dischargers that are appropriate and reasonable. Furthermore, EPA believes that the RFA's framework and requirements provide the Agency with the best approach for the Agency's evaluation of the economic impact of general permits on small entities. While using the RFA framework to inform its assessment of whether permit requirements are appropriate and reasonable, EPA will also continue to ensure that all permits satisfy the requirements of the Clean Water Act.

Accordingly, EPA has committed that the Agency will operate in accordance with the RFA's framework and requirements during the Agency's issuance of CWA general permits (in other words, the Agency commits that it will apply the RFA in its issuance of general permits as if those permits do qualify as ''rules'' that are subject to the RFA). In satisfaction of this commitment, during the course of this VGP proceeding, the Agency conducted the analysis and made the appropriate determinations that are called for by the RFA. In addition, and in satisfaction of the Agency's commitment, EPA will apply the RFA's framework and requirements in any future issuance of other NPDES general permits. EPA anticipates that for most general permits the Agency will be able to conclude that there is not a significant economic impact on a substantial number of small entities. In such cases, the requirements of the RFA framework are fulfilled by including a statement to this effect in the permit fact sheet, along with a statement providing the factual basis for the conclusion. A quantitative analysis of impacts would only be required for permits that may affect a substantial number of small entities, consistent

with EPA guidance regarding RFA certification.[1]

V. Analysis of Economic Impacts of VGP and RGP

EPA determined that, in consideration of the discussion in Section IV above, the issuance of the VGP may have the potential to affect a substantial number of small entities. Therefore, in order to determine what, if any, economic impact this permit may have on small businesses, EPA conducted an economic assessment of these general permits. This economic analysis is included in the records for these permits. Based on this assessment, EPA concludes that despite a minimal economic impact on all entities, including small businesses, this permit is not likely to have a significant economic impact on a substantial number of small entities.

Including the ballast water and other discharge requirements, the draft economic impact analysis indicates that the best management practices in this permit would cost between $ 6.7 million and $16.7 million annually. Including paperwork requirements, the permit is estimated to cost between $7.7 and $21.9 million dollars annually for domestic vessels. Including estimates of ballast water costs for foreign vessels, the permit is expected to cost between $8.9 and $23.0 million dollars annually. Depending upon sector (vessel type), median costs per firm range from $1 to $795 in the low-end assumptions and from $5 to $1,967 in the high-end assumptions (excluding median values from commercial fishing vessels which are expected to be $0). Costs for the 95th percentile range from $7 for the Deep Sea Coastal and Great Lakes Passenger Vessels to $20,355 for marine cargo handling under low-end cost estimates and from $88 to $35,190 for the same vessel classes for high-end cost estimates (see table 7.1 of the economic assessment cost estimates across vessel classes). EPA applied a cost-to-revenue test which calculates annualized pre-tax compliance cost as a percentage of total revenues and used a threshold of 1 and 3 percent to identify entities that would be significantly impacted as a result of this Permit. The total number of entities expected to exceed a 1% cost ratio ranges from 213 under low cost assumptions to 308 under high cost assumptions. Of this universe, the total number of entities expected to exceed a 3% cost ratio ranges from 55 under low cost assumptions to 73 under high cost assumptions. The total universe that would be affected by this permit includes approximately 61,000 domestic flagged vessels and 8,000 foreign flagged vessels. Accordingly, EPA concludes that this permit is unlikely to result in a significant economic impact on any businesses and in particular, small businesses. The economic analyses are available in the record for these permits.

[1] EPA's current guidance, entitled Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement and Fairness Act, was issued in November 2006 and is available on EPA's Web site: *http://www.epa.gov/sbrefa/documents/rfafinalguidance06.pdf.* After considering the Guidance and the purpose of CWA general permits, EPA concludes that general permits affecting less than 100 small entities do not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

The information collection requirements in this permit have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* as part of the NPDES Consolidated ICR. On September 28, 2008 EPA published the first public notice of this ICR under the OMB number 2040–0004 and on December 17, 2008, EPA published the final public notice for a 30 day comment period. The information collection requirements for this permit are not enforceable until OMB approves the ICR.

This information must be collected in order to appropriately administer and enforce the terms and conditions of the Vessel General Permit. This information collection is mandatory as authorized by Clean Water Act Section 308 and all information collected will be treated as Confidential Business Information (CBI).

The information collection burden for the paperwork collection requirements of this permit is estimated to be 135,693 hours per year, which represents a burden of 0.64 hours per response per year, multiplied by a total of 210,759 responses per year from 65,625 respondents (**Note:** to ensure that an adequate number of burden hours are requested, the number of respondents is slightly higher than the estimated 61,000 domestically flagged vessels identified in the economic analysis that would be affected by this permit). The frequency of responses varies, but includes every five years, annual, quarterly, and occasionally/as needed, depending on the specific reporting requirements. No reporting and record keeping costs beyond labor costs are estimated for this permit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR Part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final permit.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: December 18, 2008.

Robert W. Varney,

Regional Administrator, EPA Region 1.

Dated: December 18, 2008.

Barbara A. Finazzo,

Director, Division of Environmental Planning and Protection, EPA Region 2.

Dated: December 18, 2008.

Carl-Axel P. Soderberg,

Division Director, Caribbean Environmental Protection Division, EPA Region 2.

Dated: December 18, 2008.

Jon M. Capacasa,

Director, Water Protection Division, EPA Region 3.

Dated: December 18, 2008.

James D. Giattina,

Director, Water Protection Division, EPA Region 4.

Dated: December 18, 2008.

Peter Swenson,

Acting Director, Water Division, Water Division, EPA Region 5.

Dated: December 18, 2008.

William K. Honker,

Acting Director, Water Quality Protection Division, EPA Region 6.

Dated: December 18, 2008.

William A. Spratlin,

Director Water, Wetlands and Pesticides Division, EPA Region 7.

Dated: December 18, 2008.

Eddie A. Sierra,

Acting Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance, EPA Region 8.

Dated: December 18, 2008.

Nancy Woo,

Associate Director, Water Division, EPA Region 9.

Dated: December 18, 2008.

Michael Gearheard,

Director, Office of Water and Watersheds, EPA Region 10.

[FR Doc. E8–30816 Filed 12–24–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8757–4]

Preliminary Listing of Additional Waters To Be Included on Illinois' 2008 List of Impaired Waters Under Section 303(d) of the Clean Water Act and Proposed Delisting of Boron Impairment for Segment E–26 of the Sangamon River

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comments.

SUMMARY: This notice announces the availability of EPA's decision identifying water quality limited segments and associated pollutants in Illinois to be listed pursuant to the Clean Water Act Section 303(d)(2), and requests public comment. Section 303(d)(2) requires that states submit and EPA approve or disapprove lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards and for which total maximum daily loads (TMDLs) must be prepared.

On October 22, 2008, EPA partially approved and partially disapproved Illinois' submittal. Specifically, EPA approved Illinois' listing of waters, associated pollutants and associated priority rankings, but disapproved Illinois' decision not to list certain water quality limited segments and associated pollutants. EPA identified these additional water bodies and pollutants for inclusion on the 2008 Section 303(d) list. EPA is providing the public the opportunity to review its decision to add waters and pollutants to Illinois' 2008 Clean Water Act Section 303(d) list and its decision to delist the Boron impairment for the Sangamon waterbody. EPA will consider public comments in reaching its final decision on the additional water bodies and pollutants identified for inclusion on Illinois' final 303(d) list and the deletion of the Boron impairment.

DATES: Comments on this document must be received in writing by February 12, 2009.

ADDRESSES: Written comments on today's notice may be submitted to Timothy Henry, Acting Director, Water Division, Attn: Illinois 303(d) list, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. As an alternative, EPA will accept comments electronically. Comments should be sent to the following Internet e-mail address: *keclik.donna@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Donna Keclik, Watersheds and Wetlands Branch, at the EPA address noted above or by telephone at (312) 886–6766.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. EPA's regulations include requirements related to the implementation of Section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The lists of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7).

Consistent with EPA's regulations, Illinois submitted to EPA its listing decision under Section 303(d)(2) on June 30, 2008. On October 22, 2008, EPA approved Illinois' listing of waters and associated priority rankings, and disapproved Illinois' decision not to list 343 water quality limited segments and associated pollutants for inclusion on the 2008 Section 303(d) list. More specifically, EPA disapproved Illinois' decision to delist total nitrogen as a cause of impairment for 191 water bodies and sedimentation as an impairment for 23 water bodies based on EPA's determination that the state did not provide good cause for delisting these waterbody/impairment combinations. EPA disapproved Illinois' decision to delist sulfates (nine), dissolved oxygen (DO) (15) and total dissolved solids (TDS) (105) impairments based on Illinois' new water quality standards for sulfates and DO because these new water quality standards have not yet been approved by EPA and therefore under 40 CFR 131.21 cannot be used for listing or delisting purposes. As a result of EPA's disapproval decision, EPA is placing all these water bodies with associated impairments back on Illinois section 303(d) list. The list of waterbody/pollutants that EPA is adding to the Illinois' 303(d) list and EPA's decision document are available at *http://www.epa.gov/region5/water/wshednps/notices.htm*.

EPA solicits public comment on its identification of the 343 waters and associated pollutants set out in Attachment 1 to EPA's decision document, Tables 1–5, for inclusion on Illinois' 2008 Section 303(d) list. The waterbody impairment combinations when added to the final list will be given the priority ranking previously identified in the 2006 303(d) list approved on June 27, 2006 which can be found at *http://www.epa.state.il.us/water/tmdl/303d-list.html*.

Illinois recently submitted additional information to EPA on the proposed DO standard which should enable EPA to make a decision on the proposed standard soon. EPA is still waiting for information concerning Illinois' proposed standard change for the sulfate standard which affects the listing of sulfate and TDS impairments. If a final approval action is taken by EPA on either of the newly proposed standards by the end of this public comment period these impairments will not be added to the final approved list because the specific waters at issue will be meeting the new standards for the pollutant or impairment. The specific waterbody impairment combinations for DO, sulfate, and TDS can be found in Attachment 1 Tables 1–3 to the Illinois' (303) list decision document found at Region 5's watershed Web site *http://www.epa.gov/region5/water/wshednps/notices.htm* above.

Since EPA's October 22, 2008 decision to partially approve and partially disapprove Illinois 2008 303(d) list, Illinois has submitted information concerning an error in listing a specific water for impairment due to boron. The specific water is segment number E–26 of the Sangamon River. In 1995, Illinois submitted to EPA an adjusted standard for this segment of the Sangamon River. Consistent with Federal regulations at 40 CFR 131.21, this adjusted standard is the effective boron water quality standard for this segment. However, in preparing its 2008 303(d) list, Illinois based its attainment determination on the statewide general use boron standard at Illinois Administrative Code Section 304.105. Illinois realized this error after EPA partially approved its 2008 303(d) list. Illinois has reviewed the data for Segment E–26 of the Sangamon River and determined that the segment attains the boron standard applicable to the segment. Illinois has provided a summary of the data to EPA. EPA reviewed the data and agrees that segment E–26 of the Sangamon River should not have been included on the Section 303(d) list as impaired due to boron, and proposes to delist segment E–26 of the Sangamon River as impaired due to boron. EPA requests comments on this delisting.

Dated: December 16, 2008.

Anthony Corollo,

Acting Director, Water Division, EPA Region 5.

[FR Doc. E8–30815 Filed 12–24–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8758–1]

Scientific Workshop To Inform EPA's Response to National Academy of Science Comments on the Health Effects of Dioxin in EPA's 2003 Dioxin Reassessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of scientific workshop and poster submissions.

SUMMARY: The National Center for Environmental Assessment (NCEA), a part of the U.S. Environmental Protection Agency's (EPA) Office of Research and Development, is sponsoring a three-day public, scientific workshop, including a public review of the recent scientific literature on 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) dose-response, to assist EPA in responding to the National Academy of Sciences (NAS) report, *Health Risks from Dioxin and Related Compounds: Evaluation of the EPA Reassessment* (NAS, 2006). (*See* 73 FR 70999 for information on the preliminary literature search results for TCDD dose-response. The literature search was conducted in collaboration with the Department of Energy's Argonne National Laboratories.) The Track Group, an EPA contractor, will organize and facilitate the workshop.

Members of the public may attend the workshop as observers and may participate in open comment periods. Space is limited and registrations will be accepted on a first-come, first-served basis. As part of the registration process, members of the public may choose to submit a poster citation and abstract limited to 250 words. Space for displaying posters is limited, and abstract submissions will be accepted on a first-come, first-served basis.

DATES: The workshop will be held February 18–20, 2009, from 8 a.m. to 6 p.m. A poster session will be held on February 19, 2009, from 6:30 p.m. to 8 p.m. During this time, workshop participants will view the posters, and poster authors should be available to answer questions. Posters may be installed and displayed between the hours of 8 a.m. and 8 p.m. on February 19, 2009, and must be taken down at the end of that time. To ensure presentation of a poster, poster abstracts must be submitted to EPA's contractor, The Track Group, in advance of the workshop with a deadline of January 23, 2009.

ADDRESSES: The workshop will be held at the Hilton Cincinnati Netherland Plaza, 35 West Fifth St., Cincinnati, Ohio 45202; *telephone:* (513) 421–9100. The Track Group, an EPA contractor, is organizing and facilitating the workshop. A special conference room rate is available by mentioning ''the Dioxin Workshop.'' Registration and poster abstract submission are available online at *http://dioxinworkshop.eventbrite.com* or call the conference registration line at (703) 738–4633. To obtain copies of background information, please see the NCEA Web site: *http://www.epa.gov/ncea/;* copies are not available from The Track Group.

Special Accomodations: EPA welcomes the attendance of the public at this workshop and will make every effort to accommodate persons with disabilities. If you require special accommodations due to a disability, please contact The Track Group, 85 S. Bragg Street, Suite 301, Alexandria, VA 22312; telephone: (703) 738–4633, facsimile: (703) 997–0760, at least 7 days before the workshop.

FOR FURTHER INFORMATION CONTACT: For workshop information, registration, and logistics, contact The Track Group, 85 S. Bragg Street, Suite 301, Alexandria, VA 22312; *telephone:* (703) 738–4633; facsimile: (703) 997–0760.

For technical information, contact Glenn E. Rice, National Center for Environmental Assessment, (Mail Code: MS A–110), Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, OH 45268; *telephone:* (513) 569–7813; *facsimile:* (513) 487–2539; or *e-mail: rice.glenn@epa.gov.*

SUPPLEMENTARY INFORMATION: This workshop is designed to inform EPA's response to the NAS report, *Health Risks from Dioxin and Related Compounds: Evaluation of the EPA Reassessment* (NAS, 2006), by enlisting expert scientist and public comment and input. The main objectives of the workshop are to (1) identify the key significant comments offered by the NAS in their evaluation of the TCDD dose-response assessment in the EPA Reassessment (EPA, 2003), (2) discuss approaches for addressing these comments, and (3) identify the key published literature needed to support the EPA response.

The three key findings of the NAS (2006) were for EPA to address: ''(1) Justification of approaches to dose-response modeling for cancer and noncancer endpoints, (2) transparency and clarity in selection of key data sets for analysis, and (3) transparency, thoroughness and clarity in quantitative uncertainty analysis.'' EPA's goal for this open, public workshop is to ensure that its technical response focuses on the key issues and considers the most meaningful science to inform its understanding of these issues, while maintaining transparency throughout the process and providing opportunity for outside comment and input.

Participants in the workshop will consist of a wide range of invited scientific experts and EPA scientific staff, representing a variety of areas of expertise related to TCDD. Public participation opportunities include designated open comment periods and an evening scientific poster session. The purpose of the poster session is to provide a forum for scientists to present recent studies relevant to TCDD dose-response assessment. Scientists with significant expertise and experience with TCDD or dioxin-related compound biology will be invited to serve on expert panels for discussions throughout the workshop. These expert panels will be asked to highlight significant and emerging TCDD research and make recommendations to EPA regarding the design and scope of the dose-response analyses for TCDD, including recommendations for evaluating associated uncertainties. Open comment periods will be included in the agenda following each expert panel discussion.

Preliminary information on the program agenda is available on the NCEA Web page at *http://www.epa.gov/ncea/*. Recommendations from the expert panels will be made available on the NCEA Web page after the workshop.

Dated: December 17, 2008.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E8–30811 Filed 12–24–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE AGENCY

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 60-day Notice of Submission of Information Collection for Approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is seeking public comments concerning the information collection known as ''Advances to Housing Associates,'' which has been assigned control number 2590–0001 by the Office of Management and Budget (OMB). Pending OMB approval of an emergency extension request, a regular clearance request for OMB review and approval of a three-year extension of the control number is also beginning. OMB approval has been requested by December 31, 2008, the date of expiration.

DATES: Interested persons may submit comments on or before February 27, 2009.

ADDRESSES: Submit comments to the FHFA using any one of the following methods:

E-mail: RegComments@fhfa.gov.

Fax: (202) 408–2580.

Mail/Hand Delivery: Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington DC 20552, ATTENTION: Public Comments/ Proposed Collection; Comment Request: Advances to Housing Associates.

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to the FHFA at *regcomments@fhfa.gov* to ensure timely receipt by the agency. Include the following information in the subject line of your submission: Federal Housing Finance Agency. Proposed Collection; Comment Request: Advances to Housing Associates.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, on the FHFA Web site at *http://www.fhfa.gov/Default.aspx?Page=89*.

FOR FURTHER INFORMATION CONTACT: Jonathan F. Curtis, Senior Financial Analyst, by e-mail at *jonathan.curtis@fhfa.gov*, by telephone at (202) 408–2866, or by regular mail at the Federal Housing Finance Agency, 1625 Eye Street, NW., Washington DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

Section 10b of the Federal Home Loan Bank Act (Bank Act) (12 U.S.C. 1430b) authorizes the Federal Home Loan Banks (Banks) to make advances under certain circumstances to certified nonmember mortgagees. The FHFA refers to nonmember mortgagees as housing associates. In order to be certified as a housing associate, an applicant must meet the eligibility requirements set forth in section 10b of the Bank Act. Part 926 of the former Federal Housing Finance Board regulations [1] (12 CFR part 926) implements the statutory eligibility requirements and establishes uniform review criteria an applicant must meet in order to be certified as a housing associate by a Bank. More specifically, §§ 926.3 and 926.4 (12 CFR 926.3–926.4) implement the statutory eligibility requirements and provide guidance to an applicant on how it may satisfy such requirements. Section 926.5 (12 CFR 926.5) authorizes the Banks to approve or deny all applications for certification as a housing associate, subject to the statutory and regulatory requirements. Section 926.6 (12 CFR 926.6) permits an applicant to appeal a Bank decision to deny certification to the FHFA.

Section 950.17 of the former Finance Board regulations (12 CFR 950.17) establishes the terms and conditions under which a Bank may make advances to a certified housing associate. Section 950.17 also imposes a continuing obligation on a housing associate to provide information necessary to determine if it remains in compliance with applicable statutory and regulatory requirements.

The information collection contained in 12 CFR 926.1 through 926.6 and 950.17 is necessary to enable the Banks to determine whether an applicant satisfies the statutory and regulatory requirements to be certified initially and maintain its status as a housing associate eligible to receive Bank advances. The FHFA requires and uses the information collection to determine whether to uphold or overrule a Bank decision to deny housing associate certification to an applicant.

The OMB control number for the information collection, which expires on December 31, 2008, is 2590–0001. The likely respondents include applicants for housing associate certification and current housing associates.

B. Burden Estimate

The FHFA estimates the total annual average number of applicants at one, with one response per applicant. The estimate for the average hours per application is 10 hours. The estimate for the annual hour burden for applicants is 10 hours (1 applicant × 1 response per applicant × 10 hours).

The Finance Board estimates the total annual average number of maintenance respondents, that is, certified housing associates, at 64, with 1 response per housing associate. The estimate for the average hours per maintenance response is 0.5 hours. The estimate for the annual hour burden for certified housing associates is 32 hours (64 certified housing associates × 1 response per associate × 0.5 hours).

The estimate for the total annual hour burden is 42 hours (64 housing associates × 1 response per associate × 0.5 hours + 1 applicant × 1 response per applicant × 10 hours).

C. Comment Request

The FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of the FHFA estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on applicants and housing associates, including through the use of automated collection techniques or other forms of information technology.

Dated: December 19, 2008.

James B. Lockhart,

Director, Federal Housing Finance Agency.

[FR Doc. E8–30814 Filed 12–24–08; 8:45 am]

BILLING CODE 8070–01–P

[1] Effective July 30, 2008, Division A of the Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2654 (2008), titled the Federal Housing Finance Regulatory Reform Act of 2008 (Reform Act), created the FHFA as an independent agency of the federal government. The Reform Act transferred supervisory and oversight responsibilities over Fannie Mae, Freddie Mac, the Banks, and the Bank's Office of Finance from the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board to the FHFA. Fannie Mae, Freddie Mac, and the Banks continue to operate under rules, regulations, orders, resolutions, and determinations promulgated by OFHEO and the Finance Board until they are modified, terminated, set aside, or superseded by the FHFA. *See* Pub. L. 110–289, 122 Stat. 2795 and 2798 (*codified* at 12 U.S.C. 4511 note).

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement

under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Web site (*http://www.fmc.gov*) or contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 011223–043.

Title: Transpacific Stabilization Agreement.

Parties: American President Lines, Ltd. and APL Co. PTE Ltd.; (operating as a single carrier); China Shipping Container Lines (Hong Kong) Company Limited and China Shipping Container Lines Company Limited (operating as a single carrier); CMA CGM, S.A.; COSCO Container Lines Company Ltd; Evergreen Line Joint Service Agreement; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha Ltd.; Mediterranean Shipping Company; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; Yangming Marine Transport Corp.; and Zim Integrated Shipping Services, Ltd.

Filing Party: David F. Smith, Esq.; Sher & Blackwell, LLP; 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment would provide authority for the members to discuss cost savings and more efficient use of vessel and equipment assets and networks.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. E8–30791 Filed 12–24–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Privacy Act of 1974; Notice of Adoption of Altered and New Systems of Records

December 22, 2008.

Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, the Federal Maritime Commission published two documents in the **Federal Register** on July 2, 2008. The first was a Notice of Republication and Altered Systems of Records (73 FR 37959) which proposed amendments to the various existing Systems of Records (SOR) of the Federal Maritime Commission and republished the complete SOR including the proposed amendments. The second was a Notice of Proposed New Systems of Records (73 FR 37956) which proposed the establishment of five additional systems to the Commission's SOR.

Interested parties were afforded the opportunity to submit comments with respect to these notices. No comments were received by the Commission.

Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, the Federal Maritime Commission has adopted the proposed amendments to its SOR as well as the five additional systems to its SOR without change, effective August 11, 2008.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. E8–30792 Filed 12–24–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

Charges For Certain Disclosures

AGENCY: Federal Trade Commission.

ACTION: Notice Regarding Charges for Certain Disclosures.

SUMMARY: The Federal Trade Commission announces that the ceiling on allowable charges under Section 612(f) of the Fair Credit Reporting Act (''FCRA'') will increase from $10.50 to $11.00 effective January 1, 2009. Under 1996 amendments to the FCRA, the Federal Trade Commission is required to increase the $8.00 amount referred to in paragraph (1)(A)(i) of Section 612(f) on January 1 of each year, based proportionally on changes in the Consumer Price Index (''CPI''), with fractional changes rounded to the nearest fifty cents. The CPI increased 35.72 percent between September 1997, the date the FCRA amendments took effect, and September 2008. This increase in the CPI and the requirement that any increase be rounded to the nearest fifty cents results in an increase in the maximum allowable charge to $11.00 effective January 1, 2009.

EFFECTIVE DATE: January 1, 2009.

ADDRESSES: Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Keith B. Anderson, Bureau of Economics, Federal Trade Commission, Washing-ton, DC 20580, 202-326-3428.

SUPPLEMENTARY INFORMATION: Section 612(f)(1)(A) of the Fair Credit Reporting Act, which became effective in 1997, provides that a consumer reporting agency may charge a consumer a reasonable amount for making a disclosure to the consumer pursuant to Section 609 of the Act.[1] The law states that, where a consumer reporting agency is permitted to impose a reasonable charge on a consumer for making a disclosure to the consumer pursuant to Section 609, the charge shall not exceed $8 and shall be indicated to the consumer before making the disclosure. Section 612(f)(2) states that the Federal Trade Commission (''the Commission'') shall increase the $8.00 maximum amount on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents.

Section 211(a)(2) of the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act'') added a new Section 612(a) to the FCRA that gives consumers the right to request free annual disclosures once every 12 months. The maximum allowable charge established by this Notice does not apply to requests made under that provision. The charge does apply when a consumer who orders a file disclosure has already received a free annual disclosure and does not otherwise qualify for an additional free disclosure.

The Commission considers the $8 amount referred to in paragraph (1)(A)(i) of Section 612(f) to be the baseline for the effective ceiling on reasonable charges dating from the effective date of the amended FCRA, i.e., September 30, 1997. Each year the Commission calculates the proportional increase in the Consumer Price Index (using the most general CPI, which is for all urban consumers, all items) from September 1997 to September of the current year. The Commission then determines what modification, if any, from the original base of $8 should be made effective on January 1 of the subsequent year, given the requirement that fractional changes be rounded to the nearest fifty cents.

Between September 1997 and September 2008, the Consumer Price Index for all urban consumers and all items increased by 35.72 percent—from an index value of 161.2 in September 1997 to a value of 218.798 in September 2008. An increase of 35.72 percent in the $8.00 base figure would lead to a new figure of $10.86. However, because the statute directs that the resulting figure be rounded to the nearest $0.50, the maximum allowable charge should be $11.00.

[1] This provision, originally Section 612(*a*), was added to the FCRA in September 1996 and became effective in September 1997. It was relabeled Section 612(*f*) by Section 211(a)(1) of the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act''), Public Law 108-159, which was signed into law on December 4, 2003.

The Commission therefore determines that the maximum allowable charge for the year 2009 will be $11.00.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E8–30830 Filed 12–24–08: 8:45 am]

BILLING CODE 6750–01–S

FEDERAL TRADE COMMISSION

[File No. 081 0224]

Teva Pharmaceutical Industries Ltd. and Barr Pharmaceuticals, Inc; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 19, 2008

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Teva-Barr, File No. 081 0224,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-based form at (*http://secure.commentworks.com/ftc-TevaBarr*). To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Stephanie C. Bovee, FTC Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-2083.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 19, 2008), on the World Wide Web, at (*http://www.ftc.gov/os/2008/12/index.htm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Teva Pharmaceutical Industries Ltd. (''Teva'') and Barr Pharmaceuticals Inc. (''Barr'') that is designed to remedy the anticompetitive effects of the acquisition of Barr by Teva. Under the terms of the proposed Consent Agreement, the companies would be required to assign and divest to Watson Pharmaceuticals (''Watson'') Teva's rights and assets necessary to manufacture and market generic: (1) chlorzoxazone tablets; (2) deferoxamine injection; (3) fluoxetine weekly capsules; (4) carboplatin injection; and (5) metronidazole tablets. The Consent Agreement also requires the companies to assign and divest to Watson all of Barr's rights and assets necessary to manufacture and market generic: (1) metoclopramide hydrochloride (''HCl'') tablets; (2) cyclosporine liquid; (3) cyclosporine capsules; (4) desmopressin acetate tablets; (5) epoprostenol sodium (freeze-dried powder) injection (''epop''); (6) flutamide capsules; (7) glipizide/metformin HCl tablets; (8) mirtazapine orally disintegrating tablets (''ODT''); (9) tamoxifen citrate tablets; and (10) tetracycline HCl capsules. In addition, the proposed Consent Agreement requires the companies to divest Teva's rights and assets necessary to manufacture and market generic trazodone HCl tablets and thirteen oral contraceptive products to Qualitest Pharmaceuticals (''Qualitest'').

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order (''Order'').

Pursuant to an Agreement and Plan of Merger dated July 18, 2008, Teva proposes to acquire all of the issued and outstanding shares of Barr for approximately $7.4 billion, plus the assumption of $1.5 billion of net debt, for approximately $8.9 billion. The Commission's Complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

U.S.C. § 45, by lessening competition in the U.S. markets for the manufacture and sale of the following generic pharmaceutical products: (1) tetracycline HCl capsules; (2) chlorzoxazone tablets; (3) desmopressin acetate tablets; (4) metoclopramide HCl tablets; (5) carboplatin injection; (6) tamoxifen citrate tablets; (7) metronidazole tablets; (8) trazodone HCl tablets; (9) glipizide/metformin HCl tablets; (10) cyclosporine liquid; (11) cyclosporine capsules; (12) flutamide capsules; (13) mirtazapine ODT; (14) deferoxamine injection; (15) epop; (16) weekly fluoxetine capsules; and (17) thirteen generic oral contraceptive markets (collectively, the ''Products''). The proposed Consent Agreement will remedy the alleged violations by replacing the lost competition that would result from the acquisition in each of the markets.

The Products and Structure of the Markets

The proposed acquisition of Barr by Teva would strengthen Teva's worldwide position in generic pharmaceuticals and provide Teva with a stronger pipeline of generic products.

The transaction would reduce the number of competing generic suppliers in each of the relevant markets. The number of generic suppliers has a direct and substantial effect on generic pricing as each additional generic supplier can have a competitive impact on the market. Generic pharmaceutical customers are not likely to switch to the equivalent branded product because they are priced significantly higher than the generic products. After more than one generic product is introduced, competition among the generic competitors drives pricing, and the branded product's pricing largely becomes competitively irrelevant.

In the markets for generic tetracycline HCl tablets, chlorzoxazone tablets, and desmopressin acetate tablets, Teva and Barr are the only companies manufacturing and selling products in the United States. Tetracycline HCl is an old, broad-spectrum antibiotic used now primarily for the treatment of acne and rosacea. Chlorzoxazone is a centrally acting muscle relaxant used to treat muscle spasms. Desmopressin acetate is a synthetic replacement for an antidiuretic hormone that reduces urine production during sleep and is used to treat bed-wetting in children. Because Teva and Barr are the only suppliers of these generic products in the United States, the proposed acquisition creates a monopoly in each of these markets.

In the generic tamoxifen citrate and cyclosporine liquid markets, the proposed acquisition reduces the number of competitors from three to two. Tamoxifen citrate is a selective estrogen receptor modulator that is used in the treatment of breast cancer. Cyclosporine is an immunosuppressant drug used to prevent the rejection of transplanted organs. Combined, Teva and Barr, currently account for 73 percent of the generic tamoxifen citrate market and 55 percent of the generic cyclosporine liquid market.

Teva's proposed acquisition of Barr would reduce the number of competitors from four to three in the following generic markets: (1) metoclopramide HCl tablets; (2) carboplatin injection; (3) metronidazole tablets; (4) trazodone HCl tablets; (5) cyclosporine capsules; (6) flutamide capsules; (7) glipizide/metformin HCl tablets; (8) deferoxamine injection; and (9) mirtazapine ODT. The structure of each of these markets is as follows:

- Metoclopramide HCl is a dopamine receptor antagonist used to treat nausea and vomiting as well as gastroesophageal reflux disease (''GERD''). In the generic metoclopramide HCl market, Teva and Barr are two of only four suppliers supplying all dosage forms of metoclopramide HCl. Qualitest and Mutual/URL Pharmaceuticals (''Mutual'') are the remaining two suppliers. A combined Teva and Barr would possess 82 percent of the overall generic metoclopramide HCl market based on current sales.
- Carboplatin, the generic version of Bristol-Myers Squibb Company's (''BMS'') Paraplatin®, is a chemotherapy drug used to treat a variety of cancers, mainly ovarian, lung, head and neck cancers. Teva and Barr are two of the leading suppliers of generic carboplatin injection with a combined market share of 60 percent. APP Pharmaceuticals and Bedford Laboratories (''Bedford'') are the two remaining suppliers in the generic carboplatin injection market with 11 percent and 29 percent of the market, respectively.
- Metronidazole is an anti-infective used in the treatment of a variety of bacterial infections. Barr is the market leader in the generic metronidazole market with 50 percent market share. Teva is close behind with 39 percent of the market. Mutual and Amneal Pharmaceuticals are the only other suppliers with 4 percent and 1 percent of the market, respectively. Therefore, the proposed acquisition combines two of the most competitively significant suppliers of generic metronidazole, resulting in a combined market share of 89 percent.
- Trazodone is an antidepressant with a sedative effect. In the generic trazodone market, the proposed acquisition would result in a combined market share of 75 percent. Apotex Group is the only other competitively significant supplier with 22 percent of the market. The fourth supplier—Watson—has had limited success in this market, having captured only a 3 percent market share to date.
- Cyclosporine is an immunosuppressant drug used to prevent the rejection of transplanted organs. In the generic cyclosprine capsules market, Teva and Barr have roughly equal market shares and their post-acquisition market share would be 41 percent. Abbott Laboratories is the market leader with 51 percent of the market. The fourth supplier—Sandoz Inc. (''Sandoz'')— represents approximately 8 percent of the market.
- Flutamide is an anti-androgen drug used to treat prostate cancer. Teva, Barr, Par Pharmaceutical Companies (''Par''), and Sandoz are the four suppliers of generic flutamide. Sandoz is the market leader with 34 percent of the market. Teva has 28 percent of the market, Par has 24 percent, and Barr has 14 percent. Consequently, the proposed acquisition would result in a combined market share of 42 percent.
- Glipizide/Metformin, the generic version of BMS's Metaglip®, is commonly prescribed as a first line treatment for diabetes. Mylan Pharmaceuticals (''Mylan''), Sandoz, Teva, and Barr are the four suppliers of generic glipizide/metformin. Sandoz is the market leader with 37 percent. Barr and Teva have roughly equal market shares of 25 and 26 percent, respectively. The fourth supplier—Mylan—has the smallest market share with 12 percent. Thus, Teva's proposed acquisition of Barr would result in a post acquisition market share of 51 percent.
- Deferoxamine, the generic version of Novartis International AG's Desferal®, is a chelating agent used to remove excess iron from the body. In the generic deferoxamine market, a combined Teva and Barr would possess 16 percent of the market. Hospira Inc. is the market leader with 73 percent market share. The remaining supplier—Bedford—is a small competitor as reflected by its 11 percent share of the market. Although the combined share of Teva and Barr is only 16 percent, the proposed

transaction would combine two of only four companies offering generic deferoxamine injection in the United States. As discussed in Effects, below, the number of suppliers is the driving factor for prices in generic markets.

- Mirtazapine is an antidepressant used to treat moderate to severe depression. Only four companies currently supply generic mirtazapine in the United States—Teva, Barr, Prasco Laboratories (''Prasco''), and Aurobindo Pharma (''Aurobindo''). Prasco is the market leader with a 49 percent market share. Barr has 26 percent of the market, and Teva has 10 percent of the market. Aurobindo is the smallest competitor with only 8 percent of the market. Hence, the proposed acquisition would result in a combined market share of 36 percent.

In two product markets—epop and fluoxetine weekly capsules—the proposed acquisition would eliminate important and significant future competition. Epop is used to treat severe primary pulmonary hypertension. Epop is a new generic market and Teva is currently the only generic epop supplier. Barr has an epop product in development. Fluoxetine weekly capsules are a widely-prescribed antidepressant. Both Teva and Barr have generic products in development for the fluoxetine weekly capsules market. There are few firms that are capable of, and interested in, entering these markets.

Oral contraceptives are pills taken by mouth to prevent ovulation and pregnancy. They are the most common method of reversible birth control, used by 82 percent of women in the United States at some point during their reproductive years.

The thirteen oral contraceptive markets include two markets where both Teva and Barr participate, ten markets where Barr participates and Teva has a product in development and one market where both Teva and Barr have products in development. The two markets where both Barr and Teva currently participate—generic Ortho-Cyclen® and generic Ortho Tri-Cyclen®—are already highly concentrated. A combined Teva and Barr would have 68 percent of the generic Ortho-Cyclen® market and 51 percent of the generic Ortho Tri-Cyclen® market. Watson is the only other supplier in each of these markets.

Barr also competes in ten oral contraceptive markets where Teva is developing a competing product. These markets include generic products that are equivalent to Ortho-Cept®, Mircette®, Triphasil®, Alesse®, OrthoNovum® 1-35, OthroNovum® 7/7/7, Loestrin® FE (1mg/.02 mg & 1.5 mg/.03 mg), Loestrin® FE (1mg/.2 mg), Loestrin® FE 24, and Ovcon® 35. In each of these relevant markets, Teva is one of a limited number of firms capable of developing a generic oral contraceptive product that would compete in each of these markets, and is well-positioned to enter the markets in a timely manner. Both Teva and Barr are developing generic products equivalent to Ortho Tri-Cyclen® Lo 28 and are two of a limited number of firms with this product in development.

Entry

Entry into the markets for the manufacture and sale of the Products would not be timely, likely or sufficient in its magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. Entry would not take place in a timely manner because the combination of generic drug development times and Food and Drug Administration (''FDA'') drug approval requirements takes at least two years. Entry would not be likely because many of the relevant markets are relatively small and in decline, so the limited sales opportunities available to a new entrant would likely be insufficient to warrant the time and investment necessary to enter.

Effects

The proposed acquisition would cause significant anticompetitive harm to consumers in the U.S. markets for the manufacture and sale of each of the generic markets listed above. In generic pharmaceutical markets, pricing is heavily influenced by the number of competitors that participate in a given market. Here, the evidence shows that the prices of the generic pharmaceutical products at issue decrease with the entry of each additional competitor.

Evidence gathered during the investigation confirms that pricing for the generic pharmaceutical products at issue in the transaction is driven by the number firms that compete in the markets. Customers consistently state that the price of a generic pharmaceutical decreases with the entry of the second, third and even fourth competitor. The evidence also indicates that the presence of four significant competitors allows customers to negotiate lower prices than is the case where there are fewer firms. The proposed transaction would eliminate one of at most four competitors in each of the relevant markets and would cause significant anticompetitive harm to consumers in the U.S. markets by eliminating actual, direct, and substantial competition between Teva and Barr and by increasing the likelihood that customers will pay higher prices.

The competitive concerns can be characterized as both unilateral and coordinated in nature. The homogenous nature of the products involved, the minimal incentives to deviate, and the relatively predictable prospects of gaining new business all indicate that the firms in the market will find it profitable to coordinate their pricing. The impact that a reduction in the number of firms would have on pricing can also be explained in terms of unilateral effects, as the likelihood that the merging parties would be the first and second choices in a significant number of bidding situations is enhanced where the number of firms participating in the market decreases substantially.

The Consent Agreement

The proposed Consent Agreement effectively remedies the proposed acquisition's anticompetitive effects in the relevant product market. Pursuant to the Consent Agreement, Teva and Barr are required to divest certain rights and assets related to the Products to a Commission-approved acquirer no later than ten days after the acquisition. Specifically, the proposed Consent Agreement requires that Teva divest the oral contraceptive products and trazodone to Qualitest and that Teva/Barr divest the remainder of the Products to Watson.

The acquirer of the divested assets must receive the prior approval of the Commission. The Commission's goal in evaluating a possible purchaser of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed acquirer of divested assets must not itself present competitive problems.

Qualitest and Watson are well-positioned to manufacture and market their respective acquired Products and to compete effectively in those markets. Both Qualitest and Watson develop, manufacturer, sell, and distribute generic pharmaceuticals within the United States. Moreover, the divestitures to both companies do not present competitive problems of their own because neither competes in those markets. With their resources, capabilities, strong reputation, and experience marketing generic products, the two companies are expected to replicate the competition that would be lost with the proposed acquisition.

If the Commission determines that either Watson or Qualitest is not acceptable acquirer of the assets to be

divested, or that the manner of the divestitures is not acceptable, the parties must unwind the sale and divest the assets within six months of the date the Order becomes final to another Commission-approved acquirer. If the parties fail to divest within six months, the Commission may appoint a trustee to divest the Products.

The proposed remedy contains several provisions to ensure that the divestitures are successful. The Order requires Teva and Barr to provide transitional services to enable the Commission-approved acquirers to obtain all of the necessary approvals from the FDA. These transitional services include technology transfer assistance to manufacture the Products in substantially the same manner and quality employed or achieved by Teva or Barr. Most of the oral contraceptive products had been divested to Teva pursuant to a Commission Order in the matter of *Watson Pharmaceuticals, Inc./ Andrx Corporation*, Docket No. C-4172 (October 31, 2006). This proposed D&O does not relieve Watson of any of its obligations pursuant to the Commission Order issued in the above referenced Watson/Andrx matter.

The Commission has appointed William Rahe of Quantic Regulatory Services, LLC (''Quantic'') to oversee the asset transfer and to ensure Teva's and Barr's compliance with all of the provisions of the proposed Consent Agreement. Mr. Rahe is a senior consultant at Quantic and has several years of experience in the pharmaceutical industry. He is a highly-qualified expert on FDA regulatory matters and currently advises Quantic clients on achieving satisfactory regulatory compliance and interfacing with the FDA. In order to ensure that the Commission remains informed about the status of the proposed divestitures and the transfers of assets, the proposed Consent Agreement requires Teva and Barr to file reports with the Commission periodically until the divestitures and transfers are accomplished.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E8–30831 Filed 12–24–08: 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Proposed Project: Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law—OMB No. 0990–NEW—Office of the Secretary.

Abstract: The proposed information collection is contained in the Final Rule entitled, ''Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law.'' The purpose of this collection is to ensure, by requiring written certification of compliance similar to other, existing certifications currently made by funding recipients and applicants, that recipients of Department funds are aware of and comply with the legal obligations imposed on them by the Church Amendments (42 U.S.C. 300a–7), Public Health Service Act section 245 (42 U.S.C. 238n) and the Weldon Amendment (Consolidated Appropriations Act, 2008, Pub. L. 110–161 Div. G section 508(d), 121 Stat. 1844, 2209). We estimate the universe and number of entities that would be required to certify to be 571,947. The act of certification consists of reviewing the certification language, reviewing relevant entity policies and procedures, and reviewing files before signing. Although some entities may need to sign a certification statement more than once, we assume that the entity will only carefully review the language, procedures and their files before signing the initial statement each year.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Hospitals (less than 100 beds)	2403	1	30/60	1202
Hospitals (less than 100 beds)	1129	1	30/60	565
Hospitals (200–500 beds)	1160	1	30/60	580
Hospitals (more than 500 beds)	244	1	30/60	122
Nursing Homes (less than 50 beds)	2388	1	30/60	1194
Nursing Homes (50–99 beds)	5819	1	30/60	2910
Nursing Homes (99—199 beds)	6877	1	30/60	3439
Nursing Homes (more than 200 beds)	1037	1	30/60	519
Physicians Offices	234200	1	30/60	117100
Offices of Other Health Care Practitioners	115378	1	30/60	57689
Outpatient Care Centers	26901	1	30/60	13451

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Medical and Diagnostics Laboratories	11856	1	30/60	5928
Home Health Care Services	20184	1	30/60	10092
Pharmacies (chain and independent)	58109	1	30/60	29055
Dental Schools	56	1	30/60	28
Medical Schools (Allopathic)	125	1	30/60	63
Medical Schools (Osteopathic)	20	1	30/60	10
Nursing Schools (Licensed practical)	1138	1	30/60	569
Nursing Schools (Baccalaureate)	550	1	30/60	275
Nursing Schools (Associate Degree)	885	1	30/60	443
Nursing Schools (Diploma)	78	1	30/60	39
Occupational Therapy Schools	142	1	30/60	71
Optometry Schools	17	1	30/60	9
Pharmacy Schools	92	1	30/60	46
Podiatry Schools	7	1	30/60	4
Public Health Schools	37	1	30/60	19
Residency Programs (accredited)	8494	1	30/60	4247
Health Insurance Carriers and 3rd party Administrators	4578	1	30/60	2289
Grant awards	63741	1	30/60	31871
Contractors	4245	1	30/60	2123
State and territorial governments	57	1	30/60	29
Totals	571947	.....	.....	285981

Seleda M. Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–30743 Filed 12–24–08; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–09–09AI]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation of the Action Plan for the National Public Health Initiative on Diabetes and Women's Health—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Approximately 24 million Americans have diabetes, and more than 9 million of these individuals are women. It is projected that from 2000 to 2025, women will represent more than half of all cases of diabetes in the United States.

Diabetes can have unique and profound effects on women's lives and health. For instance, diabetes is a more common cause of coronary heart disease among women than men. In addition, among people with diabetes, the prognosis of heart disease is worse for women than men, with women having poorer quality of life and lower survival rates. The burden of diabetes for women is also unique because the disease can affect mothers and their unborn children. After pregnancy, as many as 10–50% of women with gestational diabetes mellitus (GDM) are diagnosed with type 2 diabetes within five years of delivery. The offspring of women with a history of gestational diabetes are also at risk for becoming obese during childhood or adolescence, which may increase their risk of developing type 2 diabetes later in life.

To address the burden of diabetes on women's health, the National Public Health Initiative on Diabetes and Women's Health (''The Initiative'') was established to provide support and resources for the creation and implementation of a national public health Action Plan. The Initiative is co-sponsored by the American Diabetes Association (ADA), the American Association of Diabetes Educators (AADE), the American Public Health Association (APHA), the Association of State and Territorial Health Officials (ASTHO), and the Centers for Disease Control and Prevention (CDC). CDC's Division of Diabetes Translation is dedicated to the prevention and control of diabetes, and to reducing or eliminating health disparities through targeted research, programs, and partnerships.

The Initiative's Action Plan identifies gaps in diabetes-related research and programmatic activities, and strategic objectives, within the areas of: (1) Community health; (2) diabetes state programs; (3) education and community outreach; (4) quality of care; (5) research; and (6) surveillance. Co-sponsors of the Initiative and other partner organizations have been encouraged to act on the deficiencies

and priorities identified in the Action Plan.

CDC proposes to conduct a survey to assess collective progress toward achieving the objectives outlined in the Action Plan. The survey will also request information about the specific strategies, steps, resources and partnerships that have been employed to meet the objectives. Respondents will be the 4 co-sponsors of The Initiative, 51 CDC-funded, state-based diabetes prevention and control programs, and approximately 230 private-sector public health organizations with a focus on diabetes and/or women's health. Survey responses will be compiled into a report and disseminated to respondents, allowing them to learn about each other's activities and the steps needed to replicate successful diabetes prevention and control efforts.

Because organizations are in various stages of Action Plan implementation, information will be collected once per year for a period of 3 years, and the report will be updated annually to reflect recent activities and progress. Private-sector partners will submit one survey response per organization per year. Co-sponsors will receive a modified version of the survey. Due to the size and complexity of the activities managed by co-sponsors, the co-sponsoring organizations will have the option to submit multiple survey responses from different areas of the organization, in order to capture the full range of activities conducted. It is estimated that each co-sponsor will submit an average of three responses.

Information will be collected electronically through web-based surveys. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)	Total burden (in hrs)
Co-Sponsors	Co-Sponsor Survey	4	3	30/60	6
State and Local Govt. Partners	Partner Survey	51	1	30/60	26
Private Sector Partners		230	1	30/60	115
Total					147

Dated: December 18, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–30771 Filed 12–24–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Montana State Plan Amendment (SPA) 08–003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing to be held on January 27, 2009, at the CMS Denver Regional Office, 1600 Broadway, Suite 700, Denver, Colorado 80202 to reconsider CMS' decision to disapprove Montana SPA 08–003.

Closing Date: Requests to participate in the hearing as a party must be received by the presiding officer by January 13, 2009.

FOR FURTHER INFORMATION CONTACT: Benjamin Cohen, Presiding Officer, CMS, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244, *Telephone:* (410) 786–3169.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider CMS' decision to disapprove Montana SPA 08–003 which was submitted on December 27, 2007, and disapproved on September 23, 2008. The SPA proposed to modify the reimbursement methodology for licensed denturist services and dental services effective October 1, 2007.

Section 1902(a)(30)(A) of the Social Security Act (the Act) requires that States have methods and procedures to ensure payments are consistent with economy, efficiency, and quality of care. The overall requirement in section 1902(a) of the Act for a State plan, and the specific requirement at section 1902(a)(30)(A) of the Act for methods and procedures related to payment, are implemented by Federal regulations at 42 CFR 430.10 and 42 CFR 447.252(b), which require that the State plan include a comprehensive description of the methods and standards used to set payment rates, and provide a basis for Federal financial participation (FFP). To be comprehensive, payment methodologies should be understandable, clear, and unambiguous. In addition, since the plan is the basis for FFP, it is important that the plan language provide an auditable basis for determining if payment was appropriate.

Montana SPA 08–003 proposed to reimburse denturist and dental services on a fee-for-service basis by multiplying a nationally recognized relative value unit for each service by a State specific conversion factor. CMS requested the State to include the exact conversion factor in the reimbursement methodology in order to meet the requirements of a comprehensive reimbursement methodology in accordance with Federal regulations at 42 CFR 430.10 and 447.252(b). Including the conversion rate would ensure that payment calculations were verifiable and auditable. Absent that detail, CMS requested that the State include sufficient information so that providers and CMS would know the initial rate for each service (either directly or through reference to a fee schedule) and have notice of any subsequent changes to each rate. The State declined to include such information in the SPA. Therefore, CMS was unable to approve the SPA because it does not comply with section 1902(a)(30)(A) of the Act as implemented by Federal regulations at 42 CFR 430.10 and 447.252(b).

Based on the above, and after consultation with the Secretary of the Department of Health and Human Services as required under Federal regulations at 42 CFR 430.15(c)(2), CMS disapproved Montana Medicaid SPA 08–003.

The hearing will involve the following issues:

- Whether Montana's proposed methodologies for payment of dental and denturist services, meet the requirements of section 1902(a)(30)(A) of the Social Security Act and Federal regulations at 42 CFR 430.10 and 42 CFR 447.252(b), which require that the State plan include a comprehensive description of the methods and

standards used to set payment rates, and provide a basis for FFP, when the proposed plan did not specify the amount or methodology to determine a key variable that would determine the rate (a ''conversion factor''); and

• Whether CMS incorrectly disapproved SPA 08–003 on September 23, 2008, by means of a hardcopy, date-stamped, signed letter from the CMS Acting Administrator, with a courtesy electronic copy of the signed letter e-mailed to Montana on September 24, 2008.

Section 1116 of the Act and Federal regulations at 42 CFR Part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. CMS is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Montana announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. Mary E. Dalton,
Acting Medicaid Director,
Montana DPHHS,
Helena, MT 59604–4210.

Dear Ms. Dalton:

I am responding to your request for reconsideration of the decision to disapprove the Montana State plan amendment (SPA) 08–003, which was submitted on December 27, 2007, and disapproved on September 23, 2008. The SPA proposed to modify the reimbursement methodology for licensed denturist services and dental services effective October 1, 2007.

The issues to be considered at the hearing are:

• Whether Montana's proposed methodologies for payment of dental and denturist services, meet the requirements of section 1902(a)(30)(A) of the Social Security Act and Federal regulations at 42 CFR 430.10 and 42 CFR 447.252(b), which require that the State plan include a comprehensive description of the methods and standards used to set payment rates, and provide a basis for Federal financial participation, when the proposed plan did not specify the amount or methodology to determine a key variable that would determine the rate (a ''conversion factor''); and

• Whether CMS incorrectly disapproved SPA 08–003 on September 23, 2008, by means of a hardcopy, date-stamped, signed letter from the CMS Acting Administrator, with a courtesy electronic copy of the signed letter e-mailed to Montana on September 24, 2008.

I am scheduling a hearing on your request for reconsideration to be held on January 27, 2009, at the CMS Denver Regional Office, 1600 Broadway, Suite 700, Denver, Colorado 80202, in order to reconsider the decision to disapprove SPA 08–003. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by Federal regulations at 42 CFR Part 430.

I am designating Mr. Benjamin Cohen as the presiding officer. If these arrangements present any problems, please contact the presiding officer at (410) 786–3169. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing.

Sincerely,

Kerry Weems,

Acting Administrator.

Section 1116 of the Social Security Act (42 U.S.C. 1316; 42 CFR 430.18).

(Catalog of Federal Domestic Assistance program No. 13.714, Medicaid Assistance Program.)

Dated: December 22, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E8–30820 Filed 12–24–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Head Start Facilities Construction, Purchase and Major Renovation—45 CFR part 1309.

OMB No.: 0970–0193.

Description: The Head Start Bureau is proposing to renew, without changes, 45 CFR part 1309. This rule contains the administrative requirements for Head Start and Early Head Start grantees who apply for funding to purchase, renovate, or construct Head Start program facilities. The rule ensures that grantees use standard business practices when acquiring real property and that Federal interest is preserved in properties acquired with public funds. The rule further ensures compliance with all other Federal statutes applicable to the expenditure of Federal funds when acquiring real property.

Respondents: Head Start and Early Head Start grantees and delegate agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Regulation	200	1	41	8,200

Estimated Total Annual Burden Hours: 8,200.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 22, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–30832 Filed 12–24–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Performance Measures for Healthy Marriage and Promoting Responsible Fatherhood Grant Programs.

OMB No.: New Collection.

Description: The Office of Family Assistance (OFA), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), intends to request approval from the Office of Management and Budget (OMB) for the collection of performance measures from grantees for the Healthy Marriage and Promoting Responsible Fatherhood discretionary grant programs. The performance measure data obtained from the grantees will be used by OFA to report on the overall performance of this grant program and to inform the Program Assessment Rating Tool (PART) process if the program is selected for PART review. Data will be collected from all 118 Healthy Marriage and 96 Responsible Fatherhood grantees in the OFA program. Grantees will report on program outputs and outcomes in such areas as participant's improvement in knowledge, skills, attitudes, and behaviors related to healthy marriage and responsible fatherhood. Grantees will be asked to input data for selected outputs and outcomes for activities funded under the grant. Grantees will extract data from program records and will report the data twice yearly through the ACF on-line data collection tool (OLDC). Training and assistance will be provided to grantees to support this data collection process.

Respondents: Office of Family Assistance Funded Healthy Marriage and Promoting Responsible Fatherhood Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Performance measure reporting form	214	2	0.80	342.40

Estimated Total Annual Burden Hours: 342.40.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: December 22, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–30833 Filed 12–24–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0637]

Agency Information Collection Activities; Proposed Collection; Comment Request; Financial Disclosure by Clinical Investigators

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information requiring the sponsor of any drug, biologic, or device marketing application to certify to the absence of clinical investigators and/or disclose those financial interests as required, when covered clinical studies are submitted to FDA in support of product marketing.

DATES: Submit written or electronic comments on the collection of information by February 27, 2009.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Financial Disclosure by Clinical Investigators (OMB Control Number 0910–0396)—Extension

Respondents are sponsors of marketing applications that contain clinical data from studies covered by the regulations. These sponsors represent pharmaceutical, biologic, and medical device firms. The applicant will incur reporting costs in order to comply with the final rule. Applicants will be required to submit, for example, the complete list of clinical investigators for each covered study, not employed by the applicant and/or sponsor of the covered study, and either certify to the absence of certain financial arrangements with clinical investigators or disclose the nature of those arrangements to FDA and the steps taken by the applicant or sponsor to minimize the potential for bias. The clinical investigator will have to supply information regarding financial interests or payments held in the sponsor of the covered study. FDA has said that it has no preference as to how this information is collected from investigators and that sponsors/applicants have the flexibility to collect the information in the most efficient and least burdensome manner that will be effective. FDA estimated that the total reporting costs of sponsors would be less than $450,000 annually. Costs could also occur after a marketing application is submitted if FDA determines that the financial interests of an investigator raise significant questions about the integrity of the data.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
54.4(a)(1) and (a)(2)	1,000	1	1,000	5	5,000
54.4(a)(3)	100	1	100	20	2,000
54.4	46,000	0.25	11,500	1	11,500
Total					18,500

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The sponsors of covered studies will be required to maintain complete records of compensation agreements with any compensation paid to nonemployee clinical investigators, including information showing any financial interests held by the clinical investigator, for a time period of 2 years after the date of approval of the applications. This time is consistent with the current recordkeeping requirements for other information related to marketing applications for human drugs, biologics, and medical devices. Currently, sponsors of covered studies must maintain many records with regard to clinical investigators, including protocol agreements and investigator resumes or curriculum vitae. FDA estimates than an average of 15 minutes will be required for each recordkeeper to add this record to clinical investigators' file.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
54.6	1,000	1	1,000	0.25	250
Total					250

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: December 18, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–30837 Filed 12–24–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0652]

Agency Information Collection Activities; Proposed Collection; Comment Request; Notice of Participation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements for filing a notice of participation with FDA.

DATES: Submit written or electronic comments on the collection of information by February 27, 2009.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Notice of Participation—21 CFR 12.45 (OMB Control Number 0910–0191)—Extension

Section 12.45 (21 CFR 12.45) issued under section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371), sets forth the format and procedures for any interested person to file a petition to participate in a formal evidentiary hearing, either personally or through a representative. Section 12.45 requires that any person filing a notice of participation, state their specific interest in the proceedings, including the specific issues of fact about which the person desires to be heard. This section also requires that the notice include a statement that the person will present testimony at the hearing and will comply with specific requirements in 21 CFR 12.85, or, in the case of a hearing before a Public Board of Inquiry, concerning disclosure of data and information by participants (21 CFR 13.25). In accordance with § 12.45(e) the presiding officer may omit a participant's appearance.

The presiding officer and other participants will use the collected information in a hearing to identify specific interests to be presented. This preliminary information serves to expedite the pre-hearing conference and commits participation.

The respondents are individuals or households, State or local governments, not-for-profit institutions and businesses, or other for-profit groups and institutions.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
12.45	8	1	8	3	24

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates for this collection of information are based on agency records and experience over the past 3 years.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: December 18, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–30839 Filed 12–24–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–1229]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice seeking public comments on MARPOL Reception Facilities.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC), through its Working Group on the International Convention for the Prevention of Pollution from Ships (MARPOL) Annex, has been tasked with providing comment and recommendations to the U.S. Coast Guard for optimizing domestic MARPOL port reception facilities. CTAC is a committee formed under the authority of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (Pub. L. 92–463). To assist and complement CTAC's efforts, the Coast Guard is hereby seeking comments from the public on MARPOL reception facilities in the U.S. The Coast Guard is specifically interested in identifying all issues that negatively impact MARPOL implementing regulations for port reception facilities; and recommendations to address those issues.

CTAC Tasking: The original Task Statement that was provided to CTAC at the April 24, 2008 meeting in Washington, DC, included the following:

1. Provide comments and recommendations as necessary on: (To be completed by the Spring of 2009)

- Impact, if any, on MARPOL compliance caused by a variance in disposal costs;
- Impact, if any, on MARPOL compliance caused by vessels having to shift berths to complete transfers;
- Plan to document MARPOL reception facility services required and received through an advanced notice of arrival and departure report;
- Disposal of residues at other than those facilities receiving the cargo related to those residues. Vessels currently have limited information on availability of Annex I and Annex II facilities at subsequent ports of call;
- Level of consistency in disposal procedures in fulfillment of federal, state and local MARPOL waste disposal requirements as well as operational variances among facilities. For example, in fulfillment of state requirements, some facilities may request pre-identification of constituents in Annex I as well as Annex II residues. Additionally, facilities themselves have differing disposal procedures; and,
- Feasibility of simultaneous MARPOL and cargo transfers at every facility. According to vessel operators, some facilities prohibit simultaneous discharge of MARPOL residues and cargo transfers thereby causing delays.

2. Provide a final report in items listed above, a recommended way-ahead to implement any recommendations (e.g., proposed changes to MARPOL and/or domestic regulations) and the corresponding implementing language. (To be completed by the fall of 2009)

Seeking Public Comment: Possible areas of concern for stakeholders may include:

- Conflicts with other regulations;
- Disposal cost issues at ports/terminals;
- Requirement for lab analysis of Annex I or II wastes;
- Segregation of Annex V wastes; and
- Additional burden, if any, of adopting standardized Advance Notice Forms (ANF) and/or Waste Delivery Receipt (WDR) forms adopted by the International Maritime Organization.

Public comments that are received will assist and complement CTAC's efforts. CTAC's MARPOL Annex working group is scheduled to meet in February 2009. Comments must be received by January 31, 2009 in order to be considered.

ADDRESSES: The public may address comments via USPS, e-mail or FAX, to Mr. James Prazak, CTAC Chairman, C/O The Dow Chemical Company, 2301 N. Brazosport Blvd., B–122, Freeport, TX 77541–3257. FAX (979) 238–9737, E-mail: *jprazak@dow.com*. The Coast Guard requests that copies of comments be sent HQ, U.S. Coast Guard, CG–5442, ATTN: Commander Michael Roldan, 2100 Second Street, SW., Washington, DC 20593–0001. Fax: 202–372–1906, E-mail: *luis.m.roldan@uscg.mil*.

FOR FURTHER INFORMATION CONTACT: Commander Michael Roldan, telephone 202–372–1130, e-mail: *luis.m.roldan@uscg.mil*, or David Condino, MARPOL COA Project Manager, telephone 202–372–1145, e-mail: *david.a.condino@uscg.mil*.

SUPPLEMENTARY INFORMATION: Notice seeking public comment is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Public Meeting: A separate Notice will be given regarding the next CTAC meeting at which time the Coast Guard will seek to discuss such public comments and the recommendations of CTAC. This will be a public meeting and instructions will be provided for those wishing to make oral presentations at the meeting and/or wishing to provide written comments.

Dated: December 19, 2008.

J. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. E8–30805 Filed 12–24–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–19621]

Dry Cargo Residue Discharges in the Great Lakes; Preparation of Environmental Impact Statement

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent; request for comments; notice of public scoping meeting.

SUMMARY: The Coast Guard announces its intent to prepare a new Environmental Impact Statement (EIS) for the next phase of this rulemaking. The new EIS will tier off the first EIS, which was prepared in support of the interim rule published in September 2008. Under the interim rule, the discharge of bulk dry cargo residue is allowed to continue in limited areas of the Great Lakes and under certain conditions. The Coast Guard plans to issue a final rule that may modify the interim rule and add new conditions for discharges. The new EIS will support the final rule. This notice requests public comments and begins a public scoping process to help determine the scope of issues to be addressed in the new EIS.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before March 30, 2009 or reach the Docket Management Facility by that date. The public scoping meeting will be held on January 28, 2009, from 1 p.m. to 5 p.m. Comments and related material must reach the Docket Management Facility on or before March 30, 2009.

ADDRESSES: The public scoping meeting will be held at the Hotel Blake, 500 South Dearborn, Chicago, IL 60605. The

contact telephone number for the Hotel Blake is (312) 986–1234.

In addition to submitting written statements or making verbal comments at the public scoping meeting, you may submit comments identified by docket number USCG–2004–19621 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: If you have questions regarding this notice, please contact Mr. Greg Kirkbride, U.S. Coast Guard, telephone 202–372–1479, e-mail *Gregory.B. Kirkbride@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments and related material during the public scoping process. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG–2004–19621) and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means.

To submit your comment online, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2004–19621'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing the comments: To view the comments go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert USCG–2004–19621 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Scoping Meeting

If you need special arrangements, please use the contact information in **FOR FURTHER INFORMATION CONTACT**. The meeting will start with an overview presentation, followed by a formal public comment period. Following the formal public comment period, we will hold an informal open house. At the open house, Coast Guard personnel will be available to provide more information about the National Environmental Policy Act (NEPA), Coast Guard rulemaking processes, and dry cargo residue discharges. A court reporter will be present during both the formal public comment period and the informal open house to record verbal comments from the public. The public will also be able to submit written comments related to this rulemaking at any time during the meeting. Verbal comments will be recorded and transcribed, and the transcription will be placed in the public docket along with any written statements that may be submitted during the meeting. These comments and statements will be addressed by the Coast Guard as part of the tiered Environmental Impact Statement.

Background and Purpose

Bulk dry cargo vessels on the Great Lakes sometimes wash the residue of non-hazardous and non-toxic cargo, like taconite (iron ore) pellets, coal, and grain, overboard. This ''sweeping,'' or discharge, of dry cargo residue (DCR) is allowed, under certain conditions, by 33 CFR 151.66, as amended by an interim rule published on September 29, 2008 (73 FR 56492), which was supported by an EIS (the ''first EIS'').

The interim rule also announced the Coast Guard's intent to conduct a second phase of this rulemaking before issuing a final rule. In the second phase, we want to determine what additional regulatory changes, if any, should be imposed on DCR discharges to offset any potential long term impacts from this practice. Those additional changes could include, among other possible measures, the mandatory use of DCR control measures or adjustment to the geographical boundaries within which discharges are currently allowed. A tiered EIS (40 CFR 1508.28; hereinafter referred to as the ''second EIS'') will allow the Coast Guard to focus on these specific issues, while excluding those that were decided in the first phase of the rulemaking, in order to determine whether further adjustments to the interim rule are needed.

As required by 40 CFR 1501.7, a Council on Environmental Quality regulation that implements NEPA, this notice begins an early and open public ''scoping process'' for determining the scope of issues to be addressed in the second EIS. We invite public comment on our current plan for preparing the second EIS. Currently, we intend to:

- Conduct an inventory of shoreside facilities for types of control measures used when loading and unloading dry cargo to and from vessels and types of dry cargo handled.
- Conduct an inventory of vessels that carry DCR for types of control measures used on board the vessel when loading and unloading.
- Quantify the current amount of cargo residues on vessels, with and without control measures.
- Review and analyze vessel DCR reporting forms in order to quantify DCR discharge amounts by cargo type, vessel class, and control measure.
- Evaluate costs for implementing, operating, and maintaining vessel and shoreside DCR control measures.
- Update previous impact analyses of DCR discharge on water quality changes and DCR disposition.

We may modify this plan in light of public comment received during the scoping process. This information will be used as a basis for selecting the proposed action from alternatives under consideration. Analysis of this information may also be used to develop additional alternatives not listed below that can be considered.

Possible Alternatives

Alternatives currently being considered for future Coast Guard action include:

- Adopting the interim rule as a final rule without changes. This will allow the current level of DCR discharges to continue in limited areas of the Great Lakes and under certain conditions. For the purposes of our environmental review in this second EIS, this represents the ''no-action'' alternative;
- Adopting a final rule based on the interim rule, but with changes designed to reduce the potential environmental impact of DCR discharges. Possible changes would be specified and could include:
  - Adoption of the mandatory use of DCR control measures;
- Control measures on vessels, and/or
- Control measures at the loading and unloading facilities;
  - DCR quantity discharge limits;
- DCR quantity limits could be scaled according to vessel class, size and/or route length;
  - Cargo type discharge limits; or
  - Additional restrictions on DCR discharge locations;
- Prohibit all DCR discharges in the Western Basin
- Zero-Discharge Alternative.

This is not an exhaustive list of alternatives. We intend to be guided by data on DCR discharges and DCR control measures and by consideration of all public comments.

Scoping Process

Public scoping is an early and open process for determining the scope of issues to be addressed in this second EIS and for identifying the issues related to the proposed action that may have a significant effect on the Great Lakes environment. The scoping process begins with publication of this notice and ends after the Coast Guard has:

- Invited the participation of Federal, State, and local agencies, any affected Indian tribe, and other interested persons;
  - The Coast Guard has requested the Environmental Protection Agency, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the National Park Service, and the United States Army Corps of Engineers to serve as cooperating agencies in the preparation of this second EIS. With this Notice of Intent, we are asking Federal, State, and local agencies with jurisdiction or special expertise with respect to environmental issues in the Great Lakes region, in addition to those we have already contacted, to formally cooperate with us in the preparation of this tiered EIS.
- Determined the scope and the issues to be analyzed in depth in the second EIS;
  - From our first EIS, we have identified this preliminary list of environmental resources to receive attention in the second EIS:
- Sediment physical structure
- Protected and Sensitive Areas
- Benthic Community
- Invasive Species
- Socioeconomic Resources
- Identified and eliminated from detailed study those issues that are not significant or that have been covered elsewhere (for example, we do not anticipate detailed study of the following environmental resources that we determined, in the first EIS, to have ''no impact'' from DCR discharges: fish and other pelagic organisms, waterfowl, and recreational or commercial fishing);
- Allocated responsibility for preparing the tiered EIS components;
- Indicated any related environmental assessments or environmental impact statements that are not part of the tiered EIS;
- Identified other relevant environmental review and consultation requirements, such as Coastal Zone Management Act consistency determinations, and threatened and endangered species and habitat impacts;
- Indicated the relationship between timing of the environmental review and other aspects of the application process; and
- Exercised our option under 40 CFR 1501.7(b) to hold the public scoping meeting announced in this notice.

Once the scoping process is complete, the Coast Guard will prepare a draft second EIS, and we will publish a **Federal Register** notice announcing its public availability. If you wish to be mailed or e-mailed the announcement of the second EIS's notice of availability, please contact the person named in **FOR FURTHER INFORMATION CONTACT** or send a request to be added to our contact mailing list along with your name and mailing address or an e-mail address online, by fax, mail, or hand delivery according to the *Submitting Comments* instructions above. If you provide comments on this notice, we will automatically add your contact information to our contact mailing list and you will automatically be sent an announcement of the draft second EIS's notice of availability. We will provide the public with an opportunity to review and comment on the draft second EIS. After the Coast Guard considers those comments, we will prepare the final second EIS and similarly announce its availability and solicit public review and comment.

Dated: December 19, 2008.

Jeffery G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. E8–30804 Filed 12–24–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Aircraft Operator Security

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), OMB control number 1652–0003, abstracted below to the Office of Management and Budget (OMB) for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on October 10, 2008, 73 FR 60310. TSA has implemented aircraft operator security standards at 49 CFR part 1544, which require each aircraft operator to which this part applies to adopt and implement a security program.

DATES: Send your comments by January 28, 2009. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Ginger LeMay, Office of Information Technology, TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–0011; telephone (571) 227–3616; e-mail *ginger.lemay@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Aircraft Operator Security.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0003.

Forms(s): N/A.

Affected Public: Aircraft Operators.

Abstract: 49 CFR part 1544 requires aircraft operators to maintain, update, and comply with TSA-approved comprehensive security programs to ensure the safety of persons and property traveling on their flights. These programs and related records are subject to TSA inspection.

Number of Respondents: 800.

Estimated Annual Burden Hours: An estimated 1,841,130 hours annually.

Issued in Arlington, Virginia, on December 19, 2008.

Joanna Johnson,

Acting Paperwork Reduction Act Officer, Business Improvements and Communications, Office of Information Technology.

[FR Doc. E8–30735 Filed 12–24–08; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2005–21866]

Extension of Agency Information Collection Activity Under OMB Review: Enhanced Security Procedures at Ronald Reagan Washington National Airport

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), OMB control number 1652–0035, abstracted below to the Office of Management and Budget (OMB) for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on October 20, 2008, 73 FR 62304. TSA requires General Aviation (GA) aircraft operators who wish to fly into and/or out of Ronald Reagan Washington National Airport (DCA) to designate a security coordinator and adopt the DCA Access Standard Security Program (DASSP).

DATES: Send your comments by January 28, 2009. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Ginger LeMay, Office of Information Technology, TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–0011; telephone (571) 227–3616; e-mail *ginger.lemay@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Enhanced Security Procedures at Ronald Reagan Washington National Airport.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0035.

Forms(s): N/A.

Affected Public: Aircraft Operators.

Abstract: TSA issued an interim final rule to restore access to Ronald Reagan National Airport (DCA) for certain aircraft operations while maintaining the security of critical Federal Government and other assets in the Washington, DC metropolitan area. The IFR and this information collection apply to all passenger aircraft operations into or out of DCA, except U.S. air carrier operations operating under a full security program required by 49 CFR part 1544 and foreign air carrier operations operating under 49 CFR 1546.101(a) or (b).

Number of Respondents: 548.

Estimated Annual Burden Hours: An estimated 1,370 hours annually.

Issued in Arlington, Virginia, on December 19, 2008.

Joanna Johnson,

Acting Paperwork Reduction Act Officer, Business Improvements and Communications, Office of Information Technology.

[FR Doc. E8–30737 Filed 12–24–08; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–914, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–914 and Supplements A and B, Application for T Nonimmigrant Status; Application for Immediate Family Member of T–1 Recipient; and Declaration of Law Enforcement Officer for Victim of Trafficking in Persons; OMB Control No. 1615–0099.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 30, 2008, at 73 FR 44278, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 28, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0099 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of an existing information collection.

(2) *Title of the Form/Collection:* Application for T Nonimmigrant Status; Supplement A: Application for Immediate Family Member of T–1 Recipient; and Supplement B: Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–914. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. This application permits victims of severe forms of trafficking and their immediate family members to demonstrate that they qualify for temporary nonimmigrant status pursuant to the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), and to receive temporary immigration benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–914 (500 responses at 2.25 hours per response); Supplement A (500 responses at 1 hour per response); Supplement B (200 responses at .5 hours per response).

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,725 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529–2210, (202) 272–8377.

Dated: December 19, 2008.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–30733 Filed 12–24–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–687, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–687, Application for Status as Temporary Resident under Section 245A of the Immigration and Nationality Act; OMB Control No. 1615–0090.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 17, 2008, at 73 FR 61891 allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 28, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529–2210.

Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0090 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Status as Temporary Resident under Section 245A of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–687. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and Households. The collection of information on Form I–687 is required to verify the applicant's eligibility for temporary status, and if the applicant is deemed eligible, to grant him or her the benefit sought.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 1 hour and 10 minutes (1.16 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 116,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529–2210, (202) 272–8377.

Dated: December 19, 2008.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–30734 Filed 12–24–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–881, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant To Section 203 of Pub. L. 105–100); OMB Control No. 1615–0072.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until February 27, 2009.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please add the OMB Control Number 1615–0072 in the subject box.

During this 60-day period USCIS will be evaluating whether to revise the Form I–881. Should USCIS decide to revise the Form I–881 it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30-days to comment on any revisions to the Form I–881.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Suspension of Deportation or Special Rule Cancellation of Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–881. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This form is used by a nonimmigrant to apply for suspension of deportation or special rule cancellation of removal. The information collected on this form is necessary in order for USCIS to determine if it has jurisdiction over an individual applying for this release as well as to elicit information regarding the eligibility of an individual applying for release pursuant to section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA) (Pub. L. 105–100).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 55,000 responses at 12 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 660,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210, telephone number 202–272–8377.

Dated: *December 22, 2008.*

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–30798 Filed 12–24–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: USCIS Case Status Service Online, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: USCIS Case Status Service Online; OMB Control No. 1615–0080.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until February 27, 2009.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please add the OMB Control Number 1615–0080 in the subject box.

During this 60-day period USCIS will be evaluating whether to revise USCIS Case Status Service Online. Should USCIS decide to revise USCIS Case Status Service Online, it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30-days to comment on any revisions to USCIS Case Status Service Online.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* USCIS Case Status Service Online.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Form Number (File No. OMB 33). U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This system allows individuals or their representatives to request case status of their pending application through USCIS' Web site.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000,000 responses at .072 hours (4½ minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,440,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: December 22, 2008.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–30797 Filed 12–24–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14867–B; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to K'oyitl'ots'ina, Limited, successor in interest to Hadohdleekaga, Incorporated. The lands are in the vicinity of Hughes, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 6 N., R. 20 E.,
Sec. 25 and 36.
Containing approximately 1,000 acres.

T. 6 N., R. 21 E.,
Secs. 31 and 32.
Containing approximately 1,266 acres.

T. 7 N., R. 21 E.,
Sec. 36.
Containing approximately 640 acres.

T. 8 N., R. 21 E.,
Sec. 4.
Containing approximately 611 acres.

T. 9 N., R. 21 E.,
Secs. 32 and 33.
Containing approximately 1,259 acres.

T. 6 N., R. 22 E.,
Sec. 6.
Containing approximately 319 acres.

T. 7 N., R. 22 E.,
Secs. 21 and 28.

Containing approximately 1,164 acres.

T. 9 N., R. 22 E.,
Sec. 21.

Containing approximately 579 acres.

T. 10 N., R. 22 E.,
Sec. 25, 26, and 35.

Containing approximately 1,614 acres.

T. 9 N., R. 23 E.,
Sec. 6.

Containing approximately 623 acres.

T. 10 N., R. 23 E.,
Sec. 1, 12, 29, and 32.

Containing approximately 2,364 acres.
Aggregating approximately 11,439 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until January 28, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Jason Robinson,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E8–30767 Filed 12–24–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCONO134–09–L17110000–AL0000–241A]

Notice of Public Meetings, McInnis Canyons National Conservation Area Advisory Council Meetings

Authority: Pub. L. 106–353.

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meetings.

SUMMARY: The McInnis Canyons National Conservation Area (MCNCA) Advisory Council has scheduled its 2009 meetings. During these meetings, the Advisory Council will discuss matters relevant to management of McInnis Canyons National Conservation Area and may develop resolutions and/or recommendations to provide to the Bureau of Land Management on proposed projects, plans, and programs. These meetings are open to the public.

DATES: The meeting dates are:

1. January 22, 2009, 4 p.m., Grand Junction, Colorado.

2. July 16, 2009, 4 p.m., Grand Junction, Colorado.

ADDRESSES: The meetings will be held at the Mesa County Administration Building; 544 Rood Avenue, Grand Junction, CO.

FOR FURTHER INFORMATION CONTACT: Katie A. Stevens, (970) 244–3000.

SUPPLEMENTARY INFORMATION: The McInnis Canyons National Conservation Area was established on October 24, 2000 when the President signed the Colorado Canyons National Conservation Area and Black Ridge Wilderness Act of 2000 (Act). The Act also required that an Advisory Council be established to provide advice in the preparation and implementation of the Resource Management Plan. The NCA name was congressionally changed at the end of 2004 from Colorado Canyons National Conservation Area to McInnis Canyons National Conservation Area (MCNCA). The Resource Management Plan has been completed and is now being implemented. The agenda topics for the January meeting are:

(1) River Corridor Fee/Permit Management Resolution
(2) River Corridor Monitoring Plan
(3) Future Role of Advisory Council
(4) Managers Update
(5) Advisory Council field trip schedules
(6) Public Comment period

Similar agenda items will be addressed at the July meeting. All meetings will be open to the public and will include time for public comment. Interested persons may make oral statements at the meetings or submit written statements at any meeting. Per-person time limits for oral statements may be set to allow all interested persons to speak. Summary minutes of all Council meetings will be maintained at the Bureau of Land Management Office in Grand Junction, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. In addition, minutes and other information concerning the MCNCA Advisory Council can be obtained from the MCNCA Web site at: *http://www.co.blm.gov/mcnca/index.htm*, which will be updated following each Advisory Council meeting.

Dated: December 17, 2008.

Katie A. Stevens,

McInnis Canyons National Conservation Area Manager.

[FR Doc. E8–30766 Filed 12–24–08; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV912000.L1220000.PA0000; 09–08807; TAS: 14X1109]

Northeastern Great Basin Resource Advisory Council Meetings, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Northeastern Great Basin Resource Advisory Council (RAC) will hold three meetings in Nevada during fiscal year 2009. All meetings are open to the public.

DATES: February 5, BLM Ely District Office, 702 North Industrial Way, Ely; April 9, BLM Battle Mountain District Office, 50 Bastian Road, Battle Mountain; and June 17–18, Eureka Opera House, 31 South Main Street, Eureka. The Eureka meeting will have a field trip to Robert's Mountain. Meeting times are 8 a.m. to 4 p.m. and will include a general public comment period, where the public may submit oral or written comments to the RAC. Each public comment period will begin at approximately 10 a.m. unless otherwise listed in each specific, final meeting agenda.

FOR FURTHER INFORMATION CONTACT: Stephanie Trujillo, phone: 775–289–1831 or e-mail: *Stephanie_Trujillo@blm.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the RAC is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues, associated with the management of the public lands. Topics for discussion will include, but are not limited to:

February 5—Ely RMP implementation, wild horse and burros, off-highway vehicles, mining updates, term permit renewals, wind energy proposals.

April 9—Battle Mountain RMP pre-planning, SNPLMA Round 10 review of proposals and public comment for development of recommendations to the Executive Committee, Rock Creek Project, off-highway vehicles, mining updates.

June 17–18—Healthy Lands Initiative, term permit renewals, off-highway vehicles, mining updates, sage grouse, fuels and emergency stabilization and restoration issues related to healthy lands initiative field tour to Robert's Mountain. BLM manager reports will be given at each meeting. Final agendas with any additions/corrections to agenda topics, locations, field trips and meeting times will be posted on the BLM Web site at: *http://www.blm.gov/nv/st/en/res/resource_advisory/northeastern_great.html*, and sent to the media at least 14 days before each meeting. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish to receive a copy of each agenda, should contact Stephanie Trujillo no later than 10 days prior to each meeting.

Dated: December 19, 2008.

John F. Ruhs,

Ely District Manager.

[FR Doc. E8–30769 Filed 12–24–08; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Bishop Museum, Honolulu, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Bishop Museum, Honolulu, HI, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The 10 cultural items are 1 wooden tobacco pipe, 1 stone vessel, 2 stone marbles, 1 stone lamp, 1 clay necklace, 1 wooden poi board, 1 wooden pipe, 1 ceramic or glass bottle, and 1 stone pounder. The cultural items were removed from various sites on Oahu Island, HI.

In 1918, a wooden tobacco pipe was given to the Bishop Museum by H.E. Cooper. The pipe was recorded as having been found with human bones on Cooper tract, Manoa, in 1898.

In 1923, a Kapuahi kuni anaana was donated to the Bishop Museum by A.A. Myer. The stone vessel was found in the hand of a skeleton buried in the sand during house construction in Waikiki around 1910.

At an unknown date, two stone marbles, possibly konane pieces, were found near a skeleton on E.M. Ehrhorn's lot in Mill'S Tract, Manoa. In 1926, the marbles were given to the Bishop Museum by E.M. Ehrhorn.

In 1931, a stone lamp from Halawa was given to the Bishop Museum by P. Crackel. Accession records note that it was located with a burial.

In 1959, a clay necklace was gifted to the Bishop Museum by L. Kamuela. The records state that the necklace was found with a burial on the donor's land in Waianae Valley, Waianae, and that the human remains were probably Native Hawaiian or Native Hawaiian-Chinese.

In 1931, a wooden poi board was collected and donated to the Bishop Museum by J.G. McAllister. The donor wrote that it was found with skeletal material in a burial cave on the Kahuku side of Waimea River in Waimea.

In 1931, a wooden pipe found in a cave in Niu was donated to the Bishop Museum by J.G. McAllister. The notation reads, ''in burial cave with 'the famous one.' '' No individual has been identified.

In 1959, a ceramic or glass bottle was donated to the Bishop Museum by Larry Kamada, postmaster at the Waianae Post Office. Mr. Kamada found the bottle in a burial on his property in Waianae.

In 1964, a stone pounder was donated to the Bishop Museum by Oswald Sheather. The stone pounder was found in a shallow burial while Mr. Sheather was laying a gas main at King Street and McCully in Honolulu.

Officials of the Bishop Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 10 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native Hawaiian individual. Officials of the Bishop Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Office of Hawaiian Affairs.

Representatives of any other Indian tribe or Native Hawaiian organization that believes itself to be culturally affiliated with the unassociated funerary objects should contact Betty Lou Kam, Vice President, Cultural Resources, Bishop Museum, 1525 Bernice Street, Honolulu, HI 96817, telephone (808) 848–4105 before January 28, 2009. Repatriation of the unassociated funerary objects to the Office of Hawaiian Affairs may proceed after that date if no additional claimants come forward.

The Bishop Museum is responsible for notifying the Office of Hawaiian Affairs that this notice has been published.

Dated: December 8, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–30900 Filed 12–24–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Muskegon County Museum, Muskegon, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Muskegon County Museum, Muskegon, MI. The human remains were removed from Muskegon and Oceana Counties, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Muskegon County

Museum professional staff in consultation with representatives of the Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; and Saginaw Chippewa Indian Tribe of Michigan.

At an unknown date, human remains representing a minimum of one individual were removed from an unknown location in Muskegon County, MI. In 1939, the human remains were donated to the Muskegon County Museum (Accession #697). No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of one individual were removed from an unknown location in Muskegon County, MI. In 1939, the human remains were donated to the Muskegon County Museum (Accession #699). No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of one individual were removed from an unknown location in Muskegon County, MI. In 1939, the human remains were donated to the Muskegon County Museum (Accession #766). No known individual was identified. No associated funerary objects are present.

In the 1930s, human remains representing a minimum of one individual were removed from the McNeal Mound, Wolf Lake, Muskegon County, MI. The human remains were accessioned by the Muskegon County Museum (Accession #1500). No known individual was identified. No associated funerary objects are present.

In 1942, human remains representing a minimum of one individual were removed from Vanderwall Mounds (also known as Porter Mounds), Stoney Lake, Oceana County, MI. The human remains were accessioned by the Muskegon County Museum (Accession #2602). No known individual was identified. No associated funerary objects are present.

In 1942, human remains representing a minimum of one individual were removed from Vanderwall Mounds (also known as Porter Mounds), Stoney Lake, Oceana County, MI. The human remains were accessioned by the Muskegon County Museum (Accession #2603). No known individual was identified. No associated funerary objects are present.

In 1942, human remains representing a minimum of one individual were removed from Vanderwall Mounds (also known as Porter Mounds), Stoney Lake, Oceana County, MI. The human remains were accessioned by the Muskegon County Museum (Accession #2604.a). No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of one individual were removed from Duck Lake Channel, Fruitland Township, Muskegon County, MI, by Cub Scouts. The human remains were accessioned by the Muskegon County Museum (Accession #2604.b). No known individual was identified. No associated funerary objects are present.

In 1942, human remains representing a minimum of one individual were removed from Vanderwall Mounds (also known as Porter Mounds), Stoney Lake, Oceana County, MI. The human remains were accessioned by the Muskegon County Museum (Accession #2605). No known individual was identified. No associated funerary objects are present.

The above described human remains came into the possession of the Muskegon County Museum through private donations. The areas are within known or suspected Native American occupation. The Muskegon County Museum has made the determination that the human remains described above are of Native American origin due to their age and association with areas evidencing a Native American presence.

The Muskegon area, which lies on the western shore of Michigan and at the mouth of the Muskegon River, has a long established history of Native American occupation that predates European encroachment, in the early 17th century. The Anishnaabek, which is comprised of the Odawa/Ottawa, Ojibwe/Chippewa, and Potawatomi have long called this area home. Oral traditions for the Anishnaabek place themselves in Michigan for incalculable generations before contact with Europeans.

Ancient trail systems, villages sites and burial mounds have been found in Muskegon County by one of the early founders of Michigan Archeology, Wilbert Hinsdale (''Atlas of Michigan Archeology,'' Map 7), which officials of the Muskegon County Museum reasonably believe reinforces Anishnaabek oral traditions of their occupation of the western shore of Michigan. Although Anishnaabek occupation, particularly by the Odawa in the Muskegon area, does not appear in European record until the mid–1700s, the lack of documentary evidence might be explained as a consequence of the Iroquois War (A.D.1640–1671), also known as the Beaver Wars.

The French were the first Europeans to make contact with the Great Lakes Indians. The first written account of the French encountering the Anishnaabek, a group of Odawa warriors on the Georgian Bay, occurred in 1615. Soon after their initial meeting, the French began a very prosperous fur trade with the Odawa and neighboring Great Lakes tribes. Around 1640, the Iroquois had depleted the fur supply in their traditional territories. This demand for furs, coupled with longstanding tribal hostilities, prompted the Iroquois to wage war for furs in the Great Lakes region. Iroquois aggression, in effect, depopulated the Lower Peninsula of Michigan from 1640–1670. Tribes who did not flee from the advancing Iroquois war parties were reportedly devastated. Odawas living in the Lower Peninsula did not wish to meet the same fate, and large bands dispersed into the Upper Peninsula, Wisconsin, and Western Minnesota. After years of becoming refugees in their own homeland, the Anishnaabek banded together to run the Iroquois out of Michigan. The decisive battle was fought in 1662, at Iroqouis Point, near Sault Ste. Marie (Tanner, 31).

When peace was reached with the Iroquois in 1701, the Odawa and Ojibwe slowly began to re-inhabit the Lower Peninsula of Michigan, and although war was a continual occurrence in Michigan for the Anishnaabek from the 1600s until the conclusion of the War of 1812, only the Iroquois War displaced the Odawa and Ojibwe from Michigan and only for a brief time. The west coast of Michigan was chosen for village sites due to its availability to water, game, fertile soil and fish (Feest and Feest, 774). From 1700 to 1740, groups of Odawa and Ojibwe moved south, choosing locations such as L'Abre Croch, Grand Traverse, Manistee, Muskegon, and the Grand River area (McClurken 4). By 1768, these locations had become well-established Anishnaabek settlements, with most villages being Odawa.

In sum, based on oral tradition and historical information, the Anishnaabek have occupied the Muskegon area for a long time. Archeological evidence from Wilbert Hinsdale and testimony about burial ceremonies from Andrew Blackbird (''History of the Ottawa and Chippewa Indians in Michigan,'' 1887) also comprise a reasonable basis for the officials of the Muskegon County Museum to determine that the human remains from Muskegon are Native American, and of Anishnaabek origin. However, the officials of the Muskegon County Museum cannot reasonably determine a shared group relationship with any present-day Indian Tribe.

Officials of the Muskegon County Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above

represent the physical remains of nine individuals of Native American ancestry. Officials of the Muskegon County Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.

The Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. In May 2008, the Muskegon County Museum requested that the Review Committee recommend disposition of nine culturally unidentifiable human remains to the Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; and Saginaw Chippewa Indian Tribe of Michigan, as the aboriginal occupants of the lands encompassing the present-day area of Muskegon and Oceana Counties, MI.

The Review Committee considered the proposal at its May 15–16, 2008 meeting and recommended disposition of the human remains to the Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; and Saginaw Chippewa Indian Tribe of Michigan, as the aboriginal occupants. A June 6, 2008 letter on behalf of the Secretary of Interior from the Designated Federal Official transmitted the authorization for the museum to effect disposition of the culturally unidentifiable human remains to the four Indian tribes listed above contingent on the publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact John McGarry, Executive Director, Muskegon County Museum, 430 W. Clay, Muskegon, MI 49440, telephone (231) 722–0278, before January 28, 2009 Disposition of the human remains to the Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; and Saginaw Chippewa Indian Tribe of Michigan may proceed after that date if no additional claimants come forward.

The Muskegon County Museum is responsible for notifying the Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; and Saginaw Chippewa Indian Tribe of Michigan that this notice has been published.

Dated: November 12, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–30899 Filed 12–24–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the Thomas Burke Memorial Washington State Museum (Burke Museum), University of Washington, Seattle, WA. The human remains were removed from an unknown area in Puget Sound, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Burke Museum and University of Washington professional staff in consultation with representatives of the following Federally recognized tribes: the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Squaxin Island Tribe of the Squaxin Island Reservation, Washington; Suquamish Indian Tribe of the Port Madison Reservation, Washington; Swinomish Indians of the Swinomish Reservation, Washington; and Tulalip Tribes of the Tulalip Reservation, Washington.

Sometime before 1913, human remains representing a minimum of one individual were removed from Puget Sound, WA, by University of Washington Biology Professor Trevor Kincaid. The human remains were transferred to the Burke Museum in 1913 (Burke Accn. #993, Cat. #3495). No known individual was identified. No associated funerary objects are present.

Limited provenience information about the human remains is available. Professor Kincaid was a University of Washington biology professor and studied oyster farming throughout the state. Professor Kincaid conducted field work in such a large area, that the provenience of the human remains could not reasonably be identified more specifically than Puget Sound. Salt water barnacles were found on the cranium and clearly demonstrate the human remains were removed from a salt water context.

The human remains are consistent with Native American morphology. Puget Sound is a broad geographic area, and falls within the Southern Lushootseed language group of Salish cultures. Puget Sound is within the usual and accustomed territory of the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Squaxin Island Tribe of the Squaxin Island Reservation, Washington; Suquamish Indian Tribe of the Port Madison Reservation, Washington; Swinomish Indians of the Swinomish Reservation, Washington; and Tulalip Tribes of the Tulalip Reservation, Washington, as defined by the 1855 Treaty of Medicine Creek, 1855 Point Elliot Treaty, and 1855 Treaty of Point-No-Point. Other ethnographic and legal documentation is consistent with this determination.

Officials of the Burke Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Burke Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Squaxin Island Tribe of the Squaxin Island

Reservation, Washington; Suquamish Indian Tribe of the Port Madison Reservation, Washington; Swinomish Indians of the Swinomish Reservation, Washington; and Tulalip Tribes of the Tulalip Reservation, Washington. In consultation with the above affiliated groups, the Puyallup Tribe of the Puyallup Reservation, Washington has agreed to take the lead on the repatriation process on behalf of themselves, and the seven tribes listed above.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195–3010, telephone (206) 685–2282, before January 28, 2009. Repatriation of the human remains to the Puyallup Tribe of the Puyallup Reservation, Washington may proceed after that date if no additional claimants come forward.

The Burke Museum is responsible for notifying the following Federally recognized tribes: the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Squaxin Island Tribe of the Squaxin Island Reservation, Washington; Suquamish Indian Tribe of the Port Madison Reservation, Washington; Swinomish Indians of the Swinomish Reservation, Washington; and Tulalip Tribes of the Tulalip Reservation, Washington that this notice has been published.

Dated: November 25, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–30903 Filed 12–24–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Nomination Solicitation

AGENCY: National Park Service, Interior.

ACTION: Native American Graves Protection and Repatriation Review Committee; Notice of Nomination Solicitation.

The National Park Service is soliciting nominations for one member of the Native American Graves Protection and Repatriation Review Committee. The Secretary of the Interior will appoint the member from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders. The nominee does not need to be a traditional religious leader.

Nominations must include the following information.

1. Nominations by traditional religious leaders: Nominations must be submitted with the nominator's original signature and daytime telephone number. The nominator must explain how he or she meets the definition of traditional religious leader.

2.Nominations by Indian tribes or Native Hawaiian organizations: Nominations must be submitted on official tribal or organization letterhead with the nominator's original signature and daytime telephone number. The nominator must be the official authorized by the tribe or organization to submit nominations in response to this solicitation. The nomination must include a statement that the nominator is so authorized.

3. A nomination must include the following information:

a. the nominee's name, postal address, daytime telephone number, and e-mail address; and

b. nominee's resume or brief biography emphasizing the nominee's NAGPRA experience and ability to work effectively as a member of an advisory board.

DATES: Nominations must be received by February 27, 2009.

ADDRESSES:

Address nominations to David Tarler, Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee, National NAGPRA Program, National Park Service, 1201 Eye Street, NW, 8th Floor (2253), Washington, DC 20005.

SUPPLEMENTARY INFORMATION: 1. The Review Committee was established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), at 25 U.S.C. 3006.

2. The Review Committee is responsible for -

a. monitoring the NAGPRA inventory and identification process;

b. reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items;

c. facilitating the resolution of disputes;

d. compiling an inventory of culturally unidentifiable human remains and developing a process for disposition of such remains;

e. consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the Review Committee affecting such tribes or organizations;

f. consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA; and

g. making recommendations regarding future care of repatriated cultural items.

3. Seven members compose the Review Committee. All members are appointed by the Secretary of the Interior. The Secretary may not appoint Federal officers or employees to the Review Committee.

a. Three members are appointed from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders. At least two of these members must be traditional Native American religious leaders.

b. Three members are appointed from nominations submitted by national museum organizations and scientific organizations.

c. One member is appointed from a list of persons developed and consented to by all of the other members.

4. Members serve as Special Governmental Employees, which requires submission of annual financial disclosure reports and completion of annual ethics training.

5. Appointment terms: Members are appointed for 4–year terms and incumbent members may be reappointed for 2–year terms.

6. The Review Committee's work is completed during public meetings. The Review Committee normally meets face-to-face two times per year, and each meeting is normally two or three days. The Review Committee may also hold one or more public teleconferences of several hours duration.

7. Compensation: Review Committee members are compensated for their participation in Review Committee meetings.

8. Reimbursement: Review Committee members are reimbursed for travel expenses incurred in association with Review Committee meetings.

9. Additional information regarding the Review Committee -- including the Review Committee's charter, meeting protocol, and dispute resolution procedures -- is available on the National NAGPRA Program website, at www.nps.gov/history/nagpra (click ''Review Committee'' in the menu on the right).

10. The terms ''Indian tribe,'' ''Native Hawaiian organization,'' and ''traditional religious leader'' have the same meanings as in 43 C.F.R. 10.2.

FOR FURTHER INFORMATION CONTACT: David Tarler, Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee, National NAGPRA Program, National Park Service, 1201 Eye Street, NW, 8th Floor (2253), Washington, DC 20005; telephone (202) 354–2108; email david__tarler@nps.gov.

Dated: November 21, 2008

David Tarler,

Designated Federal Officer,

Native American Graves Protection and Repatriation Review Committee.

[FR Doc. E8–30901 Filed 12–24–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–314I]

Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2009

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Interim Established Assessment of Annual Needs with Request for Comment.

SUMMARY: This notice establishes, on an interim basis, the Assessment of Annual Needs for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. DEA seeks comment regarding the Assessment of Annual Needs for those List I chemicals. The Assessment of Annual Needs for these chemicals will be proposed to be revised, pursuant to DEA regulations, during calendar year 2009. After consideration of the comments received, DEA will finalize the assessment for those chemicals, prior to proposing the revision of the assessment for those chemicals during calendar year 2009.

DATES: This notice is effective January 1, 2009. Written comments must be postmarked, and electronic comments must be sent, on or before January 28, 2009.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–314I'' on all written and electronic correspondence. Written comments being sent via regular or express mail should be sent to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152, Attention: DEA **Federal Register** Representative/ODL. Comments may be sent to DEA by sending an electronic message to *dea.diversion.policy@usdoj.gov.* DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 713 of the Combat Methamphetamine Epidemic Act (CMEA) of 2005 (Title VII of Pub. L. 109–177) (CMEA) amended Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) by adding ephedrine, pseudoephedrine, and phenylpropanolamine to existing language to read as follows: ''The Attorney General shall determine the total quantity and establish production quotas for each basic class of controlled substance in schedules I and II and for ephedrine, pseudoephedrine, and phenylpropanolamine to be manufactured each calendar year to provide for the estimated medical, scientific, research, and industrial needs of the U.S., for lawful export requirements, and for the establishment and maintenance of reserve stocks.'' Further, section 715 of CMEA amended 21 U.S.C. 952 ''Importation of controlled substances'' by adding the same List I chemicals to the existing language in paragraph (a), and by adding a new paragraph (d) to read as follows:

(a) Controlled substances in schedule I or II and narcotic drugs in schedule III, IV, or V; exceptions:

It shall be unlawful to import into the customs territory of the U.S. from any place outside thereof (but within the U.S.), or to import into the U.S. from any place outside thereof, any controlled substance in schedule I or II of subchapter I of this chapter, or any narcotic drug in schedule III, IV, or V of subchapter I of this chapter, or ephedrine, pseudoephedrine, and phenylpropanolamine, except that—

(1) such amounts of crude opium, poppy straw, concentrate of poppy straw, and coca leaves, and of ephedrine, pseudoephedrine, and phenylpropanolamine, as the Attorney General finds to be necessary to provide for medical, scientific, or other legitimate purposes * * * may be so imported under such regulations as the Attorney General shall prescribe.

* * * * *

(d)(1) With respect to a registrant under section 958 who is authorized under subsection (a)(1) to import ephedrine, pseudoephedrine, or phenylpropanolamine, at any time during the year the registrant may apply for an increase in the amount of such chemical that the registrant is authorized to import, and the Attorney General may approve the application if the Attorney General determines that the approval is necessary to provide for medical, scientific, or other legitimate purposes regarding the chemical.

Editor's Note: This excerpt of the amendment is published for the convenience of the reader. The official text is published at 21 U.S.C. 952(a) and (d)(1).

Background and Legal Authority

Section 713 of the CMEA (Title VII of Pub. L. 109–177) amended section 306 of the CSA (21 U.S.C. 826) to require that the Attorney General establish quotas to provide for the annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine. Section 715 of the CMEA amended 21 U.S.C. 952 by adding ephedrine, pseudoephedrine, and phenylpropanolamine to the existing language concerning importation of controlled substances.

The 2009 Assessment of Annual Needs represents those quantities of ephedrine, pseudoephedrine, and phenylpropanolamine which may be manufactured domestically and/or imported into the U.S. in 2009 to provide adequate supplies of each chemical for: the estimated medical, scientific, research, and industrial needs of the U.S.; lawful export requirements; and the establishment and maintenance of reserve stocks.

The responsibility for establishing the assessment has been delegated to the Administrator of the DEA by 28 CFR 0.100. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to 28 CFR 0.104.

On September 19, 2008, a notice entitled, ''Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2009: Proposed'' was published in the **Federal Register** (73 FR 54431). That notice proposed the initial 2009 Assessment of Annual Needs for ephedrine (for sale), ephedrine (for conversion), pseudoephedrine (for sale), phenylpropanolamine (for sale) and phenylpropanolamine (for conversion). All interested persons were invited to comment on or object to the proposed assessments on or before October 20, 2008.

DEA received a total of two comments, one of which was from a law firm representing an industry group comprised of distributors and retailers of over-the-counter (OTC) medications. In that comment, the law firm requested that DEA ''indicate what data it reviewed and relied on to estimate trends and projected demands'' of

ephedrine. After consideration of this comment, DEA is providing the data used in developing the proposed assessment for each of the listed chemicals and is making additional information available in the administrative record.

As discussed below, it is necessary to implement this notice on an interim basis so that DEA can issue individual import, manufacturing, and procurement quotas to DEA registered importers and manufacturers. It is necessary to issue these quotas, for import and manufacturing of pharmaceutical products containing ephedrine, pseudoephedrine, and phenylpropanolamine in a timely manner to provide for an uninterrupted supply of these materials that are important to the public health.

Comments Received

The first comment received in response to the September 19, 2008, rulemaking was from a law firm representing an industry group comprised of distributors and retailers of OTC medications. This commenter raised concerns regarding the assessment for ephedrine (for sale).

The second comment was from a DEA registered chemical manufacturer. The second commenter requested that DEA consider its individual requirement for phenylpropanolamine (for conversion) in fixing the final assessment of annual needs.

In response to these comments, the assessments for phenylpropanolamine (for conversion) and ephedrine (for sale) are discussed below within the context of the comments received.

DEA did not receive any comments on its proposed Assessment of Annual Needs for ephedrine (for conversion), phenylpropanolamine (for sale), and pseudoephedrine (for sale). While no comments were received regarding the assessment of annual needs for these materials, this notice also provides the underlying data which was used in determining the assessments for these List I chemicals, to allow for additional comment. Additional information is available in the docket.

Comment Regarding DEA's Proposed Assessment for Ephedrine (for Sale)

The commenter, a law firm representing an industry group comprised of distributors and retailers of OTC medications indicated its belief that the proposed 2009 ephedrine assessment was ''both unsupported and insufficient to meet legitimate medical needs.'' The commenter recommended that the 2009 ephedrine assessment be the same as the 2008 ephedrine (for sale) assessment (*i.e.*, 11,500 kg). In its September 19, 2008, proposed Assessment, DEA proposed an assessment of 2,500 kg of ephedrine (for sale) for 2009. The commenter stated that DEA provided no actual data or support for its 80% reduction in the 2009 ephedrine (for sale) assessment and that DEA failed to indicate what data it reviewed and relied upon in making its proposal, and for that reason requested that DEA publish the factual basis for the 2009 proposed assessment for ephedrine (for sale). The commenter also stated its belief that DEA failed to provide any indication that it considered medical factors before it proposed the 2009 assessment.

DEA Response

In its proposal, DEA published the substance of the proposed Assessment of Annual Needs and provided a description of the subjects and issues involved, specifically:

> To develop the 2009 assessment of annual needs for the U.S., DEA considered applications for 2009 import, manufacturing, and procurement quotas received from DEA registered manufacturers and importers. DEA further considered information contained in import and export declarations (DEA–486) along with information relating to trends in the national rate of disposals, actual and estimated inventories, and projected demand for the List I chemicals ephedrine, pseudoephedrine and phenylpropanolamine in accordance with 21 CFR 1315.11. (73 FR 54432, September 19, 2008)

In response to this comment, this notice further details the underlying data summarized from quota applications, from import/export documents, and data from a third party vendor, IMS Health Inc. DEA notes that the information sources used for the 2009 assessment are different from the data sources considered by DEA in establishing the 2007 and 2008 assessments. Specifically, DEA was able to consider information obtained from applications for 2009 quotas. In contrast, when the 2007 and 2008 assessments were proposed, on October 19, 2006, and September 20, 2007, respectively, DEA either lacked quota applications altogether or believed that it did not have a sufficient number of applications from which to draw meaningful conclusions. With the absence of quota applications from DEA registered importers and manufacturers in those years (2006 and 2007), DEA relied on a report prepared by IMS Health Inc.[1] The report was commissioned by DEA specifically for that purpose. This year, however, DEA is able to use the data from quota applications and from information as specified in 21 CFR 1315.11.

A summary of the underlying data from quota applications and other sources, as well as DEA's analysis of that data, are provided below.

Ephedrine Data

EPHEDRINE (FOR SALE) DATA FOR 2009 ASSESSMENT OF ANNUAL NEEDS

[Kilograms]

Ephedrine	2006	2007	2008[2]	2009 Request
Sales* (DEA 250)	1,993	2,840	1,291	921
Imports** (DEA 488)	5,627	1,337	1,179	44
Export Declarations (DEA 486)	313	168	16	n/a
Inventory* (DEA 250)	856	1,795	468	n/a
IMS *** (NSP)	1,256	1,267	n/a	n/a

* Reported sales and inventory from applications for 2009 procurement quotas (DEA 250) received as of July 15, 2008.
** Reported imports from applications for 2009 import quotas (DEA 488) received as of July 15, 2008.
*** IMS Health, IMS National Sales Perspectives™, January 2006 to December 2007, Retail and Non-Retail Channels, Data Extracted July 15, 2008.

[1] 2005 Ephedrine/Pseudoephedrine Legitimate Medical Use Methodology and Final Report *http://www.deadiversion.usdoj.gov/meth/dea_ims_study_070307.pdf.*

[2] 2008 data represents estimated sales, imports, and inventories as reported on applications for quotas.

Underlying Data and DEA's Analysis

The DEA considered total net disposals (i.e., sales) of ephedrine for the current and preceding two years, actual and estimated inventories, projected demand (2009), industrial use, and export requirements from data provided by DEA registered manufacturers and importers in procurement quota applications (DEA 250), from manufacturing quota applications (DEA 189), and from import quota applications (DEA 488).[3] The net disposals (i.e., sales) figures provided by DEA registered manufacturers on quota applications include the sales of ephedrine-based products that are used to treat asthma. In this regard, DEA considered ''medical factors'' in its assessment. For industrial use, ephedrine may be used as a chiral compound for the manufacture of non-controlled non-scheduled drug products. DEA did not receive requests for 2009 ephedrine for this industrial application.

Additionally, DEA considered data on trends in the national rate of net disposals from sales data provided by IMS Health's National Sales Perspective™ (NSP) database. Export data was provided from import and export declarations (DEA 486).

At the time DEA drafted the 2009 proposed assessment (i.e., July 15, 2008), DEA considered applications for procurement quotas from DEA registered manufacturers of ephedrine. These applications were due on or before April 1, 2008. These firms requested authority to purchase a total of 921 kg of ephedrine (for sale) in 2009. Additionally DEA considered import quota applications from DEA registered importers requesting authority to import a total of 44 kg of ephedrine (for sale). DEA had not received any requests to synthesize ephedrine in 2009.

DEA further considered information on trends in the national rate of net disposals from sales data provided by IMS Health's National Sales Perspective™ (NSP) database. IMS Health's NSP data provides national level monthly estimates of pharmaceutical product purchases by those that distribute/sell drug products to patients (retail pharmacies, hospitals, clinics, food chain stores, and etc.) and includes both prescription and OTC products. A detailed description of the methodology that IMS Health Inc. continues to use in assembling the NSP data can be found in IMS's publication, ''2005 Ephedrine/Pseudoephedrine Legitimate Medical Use Methodology and Final Report.'' [4] IMS NSP data reported the average sales volume of ephedrine for the calendar years 2006 and 2007 to be approximately 1,261 kg.

DEA further considered trends as derived from information provided in applications for import, manufacturing, and procurement quotas and in import and export declarations. Based on an analysis of the inventory, acquisitions (purchases) and disposition (sales) data provided by DEA registered manufacturers and importers on individual quota applications received as of July 15, 2008, for the 2009 quota year, manufacturers of dosage form products containing ephedrine reported sales totaling approximately 2,840 kg in 2007 and 1,291 kg in 2008; this represents a 55 percent decrease from sales reported by these firms from 2007 to 2008. During the same period, exports of ephedrine products from the U.S. as reported on export declarations (DEA 486), totaled 168 kg in 2007 and 16 kg in 2008; this represents a 90 percent decrease from levels observed in 2007. DEA notes that the import requirements are considered in respect to the sales of those substances or products produced there from. DEA notes for 2009 that DEA registered dosage form manufacturers requested authority to purchase a total of 921 kg of ephedrine which suggests that demand is expected to decrease again in 2009.

Ephedrine Calculation

DEA calculated the 2009 Assessment of Annual Needs for ephedrine as follows. DEA developed a calculation that considers the criteria defined in 21 U.S.C. 826: estimated medical, scientific, research, and industrial needs of the U.S.; lawful export requirements; and the establishment and maintenance of reserve stocks.

In determining the needs of the U.S., DEA noted that the estimated 2008 sales of ephedrine of 1,291 kg are consistent with the IMS NSP-reported average sales of ephedrine of 1,261 kg. DEA thus believes that 1,291 kg fairly represents the U.S. needs for 2009. For the establishment and maintenance of reserve stocks, DEA notes that 21 CFR 1315.24 allows for an inventory allowance (reserve stock) of 50% of a manufacturer's estimated sales. In determining the inventory allowance, however, DEA also considered the anticipated 2008 year end inventory as reported by DEA registrants.

DEA calculated the ephedrine (for sale) assessment by the following methodology:

2008 sales + reserve stock + export requirement − existing inventory = AAN 1,291 + (50%*1,291) + 16 − 468 = 1,485 kg ephedrine (for sale) for 2009

This calculation suggests that DEA's Assessment of Annual Needs for ephedrine should have been proposed to be 1,500 kg rather than the 2,500 kg actually proposed. Although DEA will revise the assessment of annual needs at least once during the 2009 calendar year, DEA's experience in the establishment of quotas has been to build a safety reserve into the assessment in the event that a DEA registered manufacturer failed to provide a timely quota application for DEA's consideration. As this notice provides for an opportunity to comment DEA is not including this safety reserve for those applicants who have failed to provide a timely application. DEA notes in its calculated assessment DEA provides for 50% reserve stock. All interested parties are invited to comment on the assessment.

Accordingly, DEA is establishing on an interim basis the Assessment of Annual Needs for ephedrine (for sale) as 1,500 kg.

Comment Regarding DEA's Proposed Assessment for Phenylpropanolamine (for conversion)

The commenter, a manufacturer that converts phenylpropanolamine to amphetamine requested DEA to consider its individual requirement for phenylpropanolamine (for conversion) in fixing the final assessment of annual needs.

DEA Response

A summary of the underlying data from quota applications and other sources, as well as DEA's analysis of that data, are provided below in response to this commenter's request for consideration of its revised requirements in determining the phenylpropanolamine (for conversion) assessment.

Phenylpropanolamine (for conversion) data

[3] Applications and instructions for procurement, import and manufacturing quotas can be found at *http://www.deadiversion.usdoj.gov/quotas/quota_apps.htm.*

[4] 2005 Ephedrine/Pseudoephedrine Legitimate Medical Use Methodology and Final Report *http://www.deadiversion.usdoj.gov/meth/dea_ims_study_070307.pdf.*

PHENYLPROPANOLAMINE (FOR CONVERSION) DATA FOR 2009 ASSESSMENT OF ANNUAL NEEDS

[Kilograms]

Phenylpropanolamine (for conversion)	2006	2007	2008 [5]	2009 Request
Sales* (DEA 250)	8,004	13,712	16,923	16,522
Imports** (DEA 488)	15,594	7,731	16,367	2,525
Export Declarations (DEA 486)	0	0	0	n/a
Inventory* (DEA 250)	4,863	3,021	4,566	n/a
APQ Amphetamine***	17,000	22,000	22,000	n/a

* Reported sales and inventory from applications for 2009 procurement quotas (DEA 250) received as of July 15, 2008.
** Reported imports from applications for 2009 import quotas (DEA 488) received as of July 15, 2008.
*** Amphetamine Aggregate Production Quota History *http://www.deadiversion.usdoj.gov/quotas/quota_history.htm*

At the time [5] DEA drafted the 2009 proposed assessment (*i.e.*, July 15, 2008), DEA reviewed procurement quota applications received from DEA registered manufacturers of phenylpropanolamine (for conversion). These firms requested the authority to purchase a total of 16,522 kg phenylpropanolamine (for conversion). Additionally DEA reviewed import quota applications from DEA registered importers requesting the authority to import a total of 2,525 kg of phenylpropanolamine (for conversion). DEA had not received any requests to synthesize phenylpropanolamine in 2009.

The commenter requested DEA to consider the commenter's increased revised requirements of 1,894 kg. DEA in its proposal considered the commenter's initial quota request in its original assessment for phenylpropanolamine (for conversion). Based on the upward revised requirements of the commenter, DEA registered manufacturers have requested the authority to purchase a total of 18,416 kg (16,522 kg + 1,894 kg) phenylpropanolamine (for conversion).

DEA determined that 18,416 kg of phenylpropanolamine (for conversion) would be insufficient to meet the historical requirements of phenylpropanolamine for the production of amphetamine as established by DEA as the Aggregate Production Quota (APQ) for amphetamine (*i.e.*, 22,000 kg for 2008). This amount 18,416 kg would be sufficient to manufacture 30% of the APQ of amphetamine (*i.e.*, 22,000 kg for 2008). DEA further considered manufacturer's conversion yields of phenylpropanolamine to amphetamine of 50% in its calculation of the phenylpropanolamine assessment. DEA calculated the phenylpropanolamine (for conversion) assessment by the following methodology:

(2008 APQ / 50% yield) + reserve stock − inventory = AAN

(22,000 / 50% yield) + 50%*(22,000 / 50% yield) − 4,566 = 61,434 kg PPA (for conversion) for 2009

This calculation suggests that DEA's Assessment of Annual Needs for phenylpropanolamine (for conversion) should have been proposed as 62,000 kg rather than the 50,000 kg actually proposed. This upwards revision of the phenylpropanolamine assessment provides for a 50% inventory allowance which was not considered in DEA's original assessment.

After consideration of this comment, DEA is establishing, on an interim basis the Assessment of Annual Needs for phenylpropanolamine (for conversion) as 62,000 kg.

Pseudoephedrine, Ephedrine (for conversion), and Phenylpropanolamine for Sale

DEA did not receive any comments on its proposed Assessment of Annual Needs for ephedrine (for conversion), phenylpropanolamine (for sale), and pseudoephedrine (for sale). However, DEA is providing the underlying data and methodologies used in determining the assessment for these list I chemicals. In determining the assessments for pseudoephedrine (for sale) and phenylpropanolamine (for sale), DEA utilized the same general methodology and calculation as was described for the assessment of ephedrine (for sale), above. For ephedrine (for conversion), DEA utilized the same general methodology and calculation as was described for the assessment of phenylpropanolamine (for conversion), above. DEA is providing an additional opportunity for comments regarding these assessments.

Pseudoephedrine (for Sale) Data

PSEUDOEPHEDRINE (FOR SALE) DATA FOR 2009 ASSESSMENT OF ANNUAL NEEDS

[Kilograms]

Pseudoephedrine (for sale)	2006	2007	2008 [6]	2009 Request
Sales* (DEA 250)	157,205	242,043	225,898	148,992
Sales* (DEA 189)	56,563	99,902	65,650	105,967
Imports** (DEA 488)	125,269	241,264	235,682	27,905
Export Declarations (DEA 486)	37,069	42,142	41,459	n/a
Inventory* (DEA 250)	84,937	65,148	4,566	n/a
IMS*** (NSP)	207,499	183,333	n/a	n/a

* Reported sales and inventory from applications for 2009 procurement quotas (DEA 250) and manufacturing quotas (DEA 189) received as of July 15, 2008.
** Reported imports from applications for 2009 import quotas (DEA 488) received as of July 15, 2008.
*** IMS Health, IMS National Sales Perspectives™, January 2006 to December 2007, Retail and Non-Retail Channels, Data Extracted July 15, 2008.

[5] 2008 data represents estimated sales, imports, and inventories as reported on applications for quotas.

[6] 2008 data represents estimated sales, imports, and inventories as reported on applications for quotas.

Pseudoephedrine (for sale) Analysis

DEA utilized the same general methodology and calculation to establish the assessment for pseudoephedrine (for sale) as was described for the assessment of ephedrine (for sale), above.

At the time DEA drafted the 2009 proposed assessments (i.e., July 15, 2008), DEA registered manufacturers dosage form products containing pseudoephedrine reported sales totaling approximately 242,043 kg in 2007 and 225,898 kg in 2008; this represents a seven percent decrease from sales reported by these firms from 2007 to 2008. During the same period exports of pseudoephedrine products from the U.S. as reported on export declarations (DEA 486), totaled 42,142 kg in 2007 and 41,459 kg in 2008; this represents a two percent decrease from levels observed in 2007. Additionally, DEA considered information on trends in the national rate of net disposals from sales data provided by IMS Health's National Sales Perspective™ (NSP) database. IMS NSP data reported the average sales volume of pseudoephedrine for the calendar years 2006 and 2007 to be approximately 195,416 kg. DEA in considering the manufacturers reported sales thus believes that 225,898 kg fairly represents the U.S. sales of pseudoephedrine for 2009 and that 41,459 kg fairly represents the export requirements of pseudoephedrine.

DEA calculated the pseudoephedrine (for sale) assessment by the following methodology:

2008 sales + reserve stock + export requirement − existing inventory = AAN

225,898 + (50%*225,898) + 41,459 − 4,566 = 375,740 kg pseudoephedrine (for sale) for 2009

This calculation suggests that DEA's Assessment of Annual Needs for pseudoephedrine (for sale) should have been proposed to be 380,000 kg rather than the 415,000 kg actually proposed in the September 19, 2008, notice. Under this rulemaking DEA is establishing, on an interim basis, the Assessment of Annual Needs for pseudoephedrine (for sale) as 380,000 kg.

Ephedrine (for Conversion) Data

EPHEDRINE (FOR CONVERSION) DATA FOR 2009 ASSESSMENT OF ANNUAL NEEDS

[Kilograms]

Ephedrine (for conversion)	2006	2007	2008 [7]	2009 Request
Sales* (DEA 250)	50,107	100,256	69,576	111,282
Imports** (DEA 488)	297,941	112,302	81,897	110,382
Inventory* (DEA 250)	5,605	135	10,913	n/a
APQ Methamphetamine***	3,130	3,130	3,130	n/a

* Reported sales and inventory from applications for 2009 procurement quotas (DEA 250) and manufacturing quotas (DEA 189) received as of July 15, 2008.

** Reported imports from applications for 2009 import quotas (DEA 488) received as of July 15, 2008.

*** Methamphetamine Aggregate Production Quota History *http://www.deadiversion.usdoj.gov/quotas/quota_history.htm*

Ephedrine (for Conversion) Analysis

Forephedrine (for conversion), DEA utilized the same general methodology and calculation as was described for the assessment of phenylpropanolamine (for conversion), above.

At the time DEA drafted the 2009 proposed assessment (i.e., July 15, 2008), DEA considered applications for procurement quotas from DEA registered manufacturers of ephedrine (for conversion). These firms requested the authority to purchase a total of 111,282 kg ephedrine (for conversion) for the manufacture of two substances: Methamphetamine and pseudoephedrine.

The assessment of need for these two substances (methamphetamine and pseudoephedrine) are determined by DEA as the Aggregate Production Quota (APQ) for methamphetamine and as the estimated sales of pseudoephedrine as referenced in the 2008 Annual Assessment of Need (AAN) for pseudoephedrine. DEA in its methodology considered the ephedrine (for conversion) requirements for the manufacture of these two substances: methamphetamine and pseudoephedrine. DEA further considered the reported conversion yields of these substances. These firms reported a conversion yield of 39% for the synthesis of methamphetamine. DEA cannot disclose the conversion yield for the synthesis of pseudoephedrine because this information is proprietary to the one manufacturer involved in this type of manufacturing.

The sum total of these manufacturing requirements therefore is the ephedrine (for conversion) assessment. DEA determined these established assessments for the manufacture of these two substances are the best indicators of ephedrine (for conversion). Reported sales of ephedrine (for conversion) are included as reference to DEA's proposed methodology.

DEA calculated the ephedrine (for conversion) assessment by the following methodology:

methamphetamine requirement + pseudoephedrine requirement = AAN

The calculation for the ephedrine (for conversion) requirements for the manufacture of methamphetamine are as follows:

(2008 APQ methamphetamine/39% yield) + reserve stock − inventory = ephedrine (for manufacture of methamphetamine) (3,130/39% yield) + 50%*(3,130/39% yield) − 10,913 = 1,125 kg

The calculation for the ephedrine (for conversion) requirements for the manufacture of pseudoephedrine leads to a result of 106,424 kg. DEA cannot provide the details of the calculation because this would reveal the conversion yield for the synthesis of pseudoephedrine, which is proprietary to the one manufacturer involved in this type of manufacturing.

Therefore, the assessment for ephedrine was determined by the sum total of the ephedrine (for conversion) requirements as described by the following methodology:

methamphetamine requirement + pseudoephedrine requirement = AAN

1,125 + 106,424 = 107,549 kg ephedrine (for conversion) for 2009

DEA is establishing, on an interim basis, the Assessment of Annual Needs for ephedrine (for conversion) as 110,000 kg, as originally proposed. DEA will revise the assessment of annual needs at least once during the 2009 calendar year.

[7] 2008 data represents estimated sales, imports, and inventories as reported on applications for quotas.

Phenylpropanolamine (for Sale) Data

PHENYLPROPANOLAMINE (FOR SALE) DATA FOR 2009 ASSESSMENT OF ANNUAL NEEDS

[Kilograms]

Phenylpropanolamine (for sale)	2006	2007	2008 [8]	2009 Request
Sales* (DEA 250)	4,718	5,502	3,938	6,721
Imports** (DEA 488)	5,751	5,714	4,400	7,532
Export Declarations (DEA 486)	0	1,002	0	n/a
Inventory* (DEA 250)	3,617	4,439	1,405	n/a

* Reported sales and inventory from applications for 2009 procurement quotas (DEA 250) and manufacturing quotas (DEA 189) received as of July 15, 2008.

** Reported imports from applications for 2009 import quotas (DEA 488) received as of July 15, 2008.

Phenylpropanolamine (for Sale) Analysis

DEA utilized the same general methodology and calculation to establish the assessment for phenylpropanolamine (for sale) as was described for the assessment[8] of ephedrine (for sale), above.

At the time DEA drafted the 2009 proposed assessments (i.e., July 15, 2008), DEA registered manufacturers dosage form products containing phenylpropanolamine reported sales totaling approximately 4,718 in 2006 and 5,502 kg in 2007 and 3,938 kg in 2008; this represents a 28 percent decrease from sales reported by these firms from 2007 to 2008 and a 17% decrease from 2006 to 2008. DEA notes phenylpropanolamine is sold primarily as a veterinary product for the treatment for canine incontinence and is not FDA approved for human consumption. IMS NSP Health Data does not capture sales of phenylpropanolamine to these channels and is therefore not included. DEA in considering the manufacturers reported sales thus believes that 3,983 kg fairly represents the U.S. sales of phenylpropanolamine for 2009.

DEA calculated the phenylpropanolamine (for sale) assessment by the following methodology:

2008 sales + reserve stock + export requirement − existing inventory = AAN

3,938 + (50%*3,938) + 0 − 1,405 = 4,502 kg phenylpropanolamine (for sale) for 2009

This calculation suggests that DEA's Assessment of Annual Needs for phenylpropanolamine (for sale) should have been proposed to be 4,500 kg rather than the 7,500 kg actually proposed. As noted above, DEA is no longer including a safety reserve into the assessment because DEA clearly demonstrates the data and methodology with which DEA calculated the assessment. Further, this notice provides for an opportunity to comment.

DEA is establishing, on an interim basis the Assessment of Annual Needs for phenylpropanolamine (for sale) as 4,500 kg. For each of the established assessments, DEA will revise the assessment of annual needs at least once during the 2009 calendar year.

Conclusion

Based on information provided in the comments, along with information provided by DEA-registered manufacturers and importers of these List I chemicals on applications for individual import, manufacturing, and procurement quotas pursuant to DEA regulations, DEA is publishing this notice establishing the assessment of annual needs effective January 1, 2009, on an interim basis. DEA believes that without the publication of this notice on an interim basis, DEA would be unable to issue quotas for the import and manufacture of the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. Without such quotas, regulated industry would be prevented from importing and manufacturing activities involving these chemicals.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA (21 U.S.C. 826), and delegated to the Administrator of the DEA by 28 CFR 0.100, and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby orders that the 2009 Assessment of Annual Needs for ephedrine, pseudoephedrine, and phenylpropanolamine, expressed in kilograms of anhydrous acid or base, be established as follows:

List I chemical	Established 2009 assessment of annual needs
Ephedrine (for sale)	1,500
Ephedrine (for conversion)	110,000
Pseudoephedrine (for sale)	380,000
Phenylpropanolamine (for sale)	4,500
Phenylpropanolamine (for conversion)	62,000

Regulatory Certifications

Administrative Procedure Act (5 U.S.C. 553)

The Administrative Procedure Act (APA) generally requires that agencies, prior to issuing a new rule, publish a notice of proposed rulemaking in the **Federal Register**. The APA also allows exceptions from this requirement when ''the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B).

The CMEA of 2005 specifically amended 21 U.S.C. 826 to mandate the establishment of production quotas for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. DEA has no discretion in this requirement and has established the same system of production quotas for these three List I chemicals as is currently established for controlled substances in Schedules I and II. Further, the CMEA amended 21 U.S.C. 952 to prohibit all importation of ephedrine, pseudoephedrine, and phenylpropanolamine except such amounts as the Attorney General finds to be necessary for medical, scientific, or other legitimate purposes. The Act further amended § 952 regarding import quotas for these three List I chemicals.

Taken together, §§ 826 and 952 require that DEA establish aggregate production quotas, herein referred to as an Assessment of Annual Needs, for these List I chemicals. Further, taken

[8] 2008 data represents estimated sales, imports, and inventories as reported on applications for quotas. Import and export declarations data extracted July 15, 2008.

together, §§ 826 and 952 require that DEA issue individual import and manufacturing quotas to registrants registered to import or manufacture ephedrine, pseudoephedrine, and phenylpropanolamine who apply for, and are granted, such individual quotas. As section 826 indicates, the Assessment of Annual Needs is established for each calendar year (21 U.S.C. 826(a)). The Attorney General, DEA by delegation, is required ''to limit or reduce individual production quotas to the extent necessary to prevent the aggregate of individual quotas from exceeding the amount determined necessary each year by the Attorney General,'' *i.e.*, the Assessment of Annual Needs (21 U.S.C. 826(b)). Thus, individual manufacturing and import quotas for ephedrine, pseudoephedrine, and phenylpropanolamine cannot be calculated without the establishment of the Assessment of Annual Needs.

If DEA were not to establish the initial Assessment of Annual Needs, while seeking additional comment, DEA would be unable to issue individual quotas to importers and manufacturers who had applied for, and were to be granted, such quotas. If DEA cannot issue such individual quotas prior to January 1, 2009, importers and manufacturers will have no means by which to acquire the List I chemicals ephedrine, pseudoephedrine, or phenylpropanolamine necessary for them to conduct business.

DEA believes that it is in the public interest to ensure that importers and manufacturers of products containing ephedrine, pseudoephedrine, and phenylpropanolamine be able to obtain these List I chemicals on and after January 1, 2009. DEA wishes to ensure that products containing these List I chemicals remain available to the public while interested parties are provided with further opportunity to comment on DEA's Assessment of Annual Needs. To ensure availability of these products, and to ensure continued legitimate commerce, including the importation and manufacture of products containing these List I chemicals, DEA finds good cause to publish this Assessment of Annual Needs on an interim basis while seeking additional comment. In so doing, DEA recognizes that exceptions to the APA's notice and comment procedures are to be ''narrowly construed and only reluctantly countenanced.'' *Am. Fed'n of Gov't Employees* v. *Block,* 655 F2d 1153, 1156 (D.C. Cir. 1981) (quoting *New Jersey Dep't of Envtl. Prot.* v. *EPA,* 626 F.2d 1038, 1045 (D.C. Cir. 1980)).

Under 5 U.S.C. 553(d), DEA must generally provide a 30-day delayed effective date for final rules. DEA may dispense with the 30-day delayed effective date requirement ''for good cause found and published with the rule.'' DEA believes that good cause exists to make this Interim Assessment of Annual Needs with Request for Comment effective January 1, 2009. As DEA noted previously, the 2009 Assessment of Annual Needs must be established, and individual quotas issued, on January 1, 2009, so as not to impede legitimate commerce in these List I chemicals during the calendar year. DEA believes that good cause exists not to delay the effective date of this notice by 30 days to ensure that the Assessment of Annual Needs may be established, and individual import and manufacturing quotas issued, by January 1, 2009.

Finally, DEA notes that the CSA and its implementing regulations allow registrants who have applied for or received a manufacturing quota to apply for an increase in that quota to meet the registrant's estimated disposal, inventory, or other requirements during the remainder of the year (21 U.S.C. 826(e), 21 CFR 1315.25(a), 1315.32(g)). Further, the CSA and its implementing regulations allow registrants who are authorized to import ephedrine, pseudoephedrine, or phenylpropanolamine to apply for an increase in the amount of the chemical the registrant is authorized to import (21 U.S.C. 952(d), 21 CFR 1315.36(b)). DEA notes that registrants may use these provisions to request increases in individual manufacturing and import quotas, respectively, pending any revisions of this Interim Assessment.

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this action will not have a significant economic impact on a substantial number of small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601–612. The establishment of the assessment of annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine is mandated by law. The assessments are necessary to provide for the estimated medical, scientific, research, and industrial needs of the U.S., for lawful export requirements, and the establishment and maintenance of reserve stocks. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Executive Order 12866

The Office of Management and Budget has determined that notices of assessment of annual needs are not subject to centralized review under Executive Order 12866.

Executive Order 13132

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

Executive Order 12988

This action meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Unfunded Mandates Reform Act of 1995

This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

Dated: December 19, 2008.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E8–30808 Filed 12–24–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA # 317E]

Controlled Substances: Established Initial Aggregate Production Quotas for 2009

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of aggregate production quotas for 2009.

SUMMARY: This notice establishes initial 2009 aggregate production quotas for

controlled substances in schedules I and II of the Controlled Substances Act (CSA).

DATES: *Effective Date:* December 29, 2008.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in schedules I and II. This responsibility has been delegated to the Administrator of the DEA by 28 CFR 0.100. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to 28 CFR 0.104.

The 2009 aggregate production quotas represent those quantities of controlled substances that may be produced in the United States in 2009 to provide adequate supplies of each substance for: The estimated medical, scientific, research and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks (21 U.S.C. 826(a) and 21 CFR 1303.11). These quotas do not include imports of controlled substances for use in industrial processes.

On November 7, 2008, a notice of the proposed initial 2009 aggregate production quotas for certain controlled substances in schedules I and II was published in the **Federal Register** (73 FR 66256). All interested persons were invited to comment on or object to these proposed aggregate production quotas on or before December 8, 2008.

Six responses were received within the published comment period, offering comments on a total of 20 schedule I and II controlled substances. The commenters stated that the proposed aggregate production quotas for 1-piperdinocyclohexanecarbonitrile, codeine (for sale), difenoxin, dihydromorphine, gamma hydroxybutyric acid, hydromorphone, meperidine, merperidine intermediate A, meperidine intermediate B, meperidine intermediate C, methadone, methadone intermediate, methamphetamine (for conversion), methylphenidate, morphine (for sale), nabilone, N-benzylpiperazine, oxycodone (for sale), tetrahydrocannabinols, and thebaine were insufficient to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and for the establishment and maintenance of reserve stocks.

One of the commenters also stated that publication of the proposed aggregate production quotas in November leaves insufficient time to consider comments and further commented that DEA has not complied with the requirement of 21 U.S.C. 826(c) to establish manufacturing quota for individual companies by October 1 for the entire calendar year.

DEA is unable to issue individual manufacturing quotas until the initial aggregate production quotas have been established. DEA strives to publish all **Federal Register** notices pertaining to the aggregate production quotas as early as possible, but is limited by the timeliness and availability of information utilized by the agency in establishing the aggregate production quotas. The publication of the aggregate production quotas was delayed, in part, due to incomplete and late submissions of manufacturer year-end inventories and untimely procurement and manufacturing quota applications. In addition, DEA had to give priority to the current manufacturing and procurement quota requests to ensure the maintenance of an uninterrupted supply in 2008.

In arriving at the aggregate production quotas, DEA has taken into consideration the above comments along with the factors set forth at 21 CFR 1303.11(b) and other relevant 2008 factors, including 2008 manufacturing quotas, current 2008 sales and inventories, 2009 export requirements, additional applications received, and research and product development requirements. Based on this information, DEA has adjusted the initial aggregate production quotas for 1-piperdinocyclohexanecarbonitrile, difenoxin, gamma hydroxybutyric acid, meperidine intermediate A, meperidine intermediate B, meperidine intermediate C, nabilone, N-benzylpiperazine and oxycodone (for sale) to meet the legitimate needs of the United States.

Regarding codeine (for sale), dihydromorphine, hydromorphone, methadone, methadone intermediate, methamphetamine (for conversion), morphine (for sale), tetrahydrocannabinols, and thebaine, DEA has determined that the proposed initial 2009 aggregate production quotas are sufficient to meet the current 2009 estimated medical, scientific, research and industrial needs of the United States.

Pursuant to 21 CFR 1303, the Deputy Administrator of DEA will, in 2009, adjust aggregate production quotas and individual manufacturing quotas allocated for the year based upon 2008 year-end inventory and actual 2008 disposition data supplied by quota recipients for each basic class of schedule I or II controlled substance.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA (21 U.S.C. 826), and delegated to the Administrator of DEA by 28 CFR 0.100, and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby orders that the 2009 initial aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class—Schedule I	Established 2009 quotas
2,5–Dimethoxyamphetamine	2 g
2,5–Dimethoxy-4-ethylamphetamine (DOET)	2 g
3–Methylfentanyl	2 g
3–Methylthiofentanyl	2 g
3,4–Methylenedioxyamphetamine (MDA)	25 g
3,4–Methylenedioxy-N-ethylamphetamine (MDEA)	10 g
3,4–Methylenedioxymethamphetamine (MDMA)	20 g
3,4,5–Trimethoxyamphetamine	2 g
4–Bromo-2,5-dimethoxyamphetamine (DOB)	2 g
4–Bromo-2,5-dimethoxyphenethylamine (2–CB)	2 g
4–Methoxyamphetamine	27 g
4–Methylaminorex	2 g
4–Methyl-2,5-dimethoxyamphetamine (DOM)	2 g

Basic class—Schedule I	Established 2009 quotas
5–Methoxy-3,4-methylenedioxyamphetamine	2 g
5–Methoxy-N,N-diisopropyltryptamine	5 g
Acetyl-alpha-methylfentanyl	2 g
Acetyldihydrocodeine	2 g
Acetylmethadol	2 g
Allylprodine	2 g
Alphacetylmethadol	2 g
Alpha-ethyltryptamine	2 g
Alphameprodine	2 g
Alphamethadol	2 g
Alpha-methylfentanyl	2 g
Alpha-methylthiofentanyl	2 g
Aminorex	2 g
Benzylmorphine	2 g
Betacetylmethadol	2 g
Beta-hydroxy-3-methylfentanyl	2 g
Beta-hydroxyfentanyl	2 g
Betameprodine	2 g
Betamethadol	2 g
Betaprodine	2 g
Bufotenine	3 g
Cathinone	3 g
Codeine-N-oxide	602 g
Diethyltryptamine	2 g
Difenoxin	3,000 g
Dihydromorphine	2,549,000 g
Dimethyltryptamine	3 g
Gamma-hydroxybutyric acid	24,200,000 g
Heroin	20 g
Hydromorphinol	2 g
Hydroxypethidine	2 g
Ibogaine	1 g
Lysergic acid diethylamide (LSD)	10 g
Marihuana	4,500,000 g
Mescaline	7 g
Methaqualone	5 g
Methcathinone	4 g
Methyldihydromorphine	2 g
Morphine-N-oxide	605 g
N-Benzylpiperazine	2 g
N,N-Dimethylamphetamine	7 g
N-Ethylamphetamine	2 g
N-Hydroxy-3,4-methylenedioxyamphetamine	2 g
Noracymethadol	2 g
Norlevorphanol	52 g
Normethadone	2 g
Normorphine	16 g
Para-fluorofentanyl	2 g
Phenomorphan	2 g
Pholcodine	2 g
Psilocybin	7 g
Psilocyn	7 g
Tetrahydrocannabinols	312,500 g
Thiofentanyl	2 g
Trimeperidine	2 g

Basic class—Schedule II	Established 2009 quotas
1–Phenylcyclohexylamine	2 g
1–piperdinocyclohexanecarbonitrile	2 g
Alfentanil	8,000 g
Alphaprodine	2 g
Amobarbital	3 g
Amphetamine (for sale)	17,000,000 g
Amphetamine (for conversion)	5,000,000 g
Cocaine	247,000 g
Codeine (for sale)	39,605,000 g
Codeine (for conversion)	65,000,000 g
Dextropropoxyphene	106,000,000 g
Dihydrocodeine	1,200,000 g
Diphenoxylate	947,000 g
Ecgonine	83,000 g

Basic class—Schedule II	Established 2009 quotas
Ethylmorphine	2 g
Fentanyl	1,428,000 g
Glutethimide	2 g
Hydrocodone (for sale)	55,000,000 g
Hydromorphone	3,300,000 g
Isomethadone	2 g
Levo-alphacetylmethadol (LAAM)	3 g
Levomethorphan	5 g
Levorphanol	10,000 g
Lisdexamfetamine	6,200,000 g
Meperidine	8,600,000 g
Meperidine Intermediate-A	3 g
Meperidine Intermediate-B	7 g
Meperidine Intermediate-C	3 g
Metazocine	1 g
Methadone (for sale)	25,000,000 g
Methadone Intermediate	26,000,000 g
Methamphetamine	3,130,000 g
[680,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 2,405,000 grams for methamphetamine mostly for conversion to a schedule III product; and 45,000 grams for methamphetamine (for sale)]	
Methylphenidate	50,000,000 g
Morphine (for sale)	35,000,000 g
Morphine (for conversion)	100,000,000 g
Nabilone	9,002 g
Noroxymorphone (for sale)	10,000 g
Noroxymorphone (for conversion)	9,000,000 g
Opium (powder)	1,050,000 g
Opium (tincture)	230,000 g
Oripavine	15,000,000 g
Oxycodone (for sale)	77,560,000 g
Oxycodone (for conversion)	3,400,000 g
Oxymorphone (for sale)	2,000,000 g
Oxymorphone (for conversion)	12,000,000 g
Pentobarbital	28,000,000 g
Phenazocine	1 g
Phencyclidine	20 g
Phenmetrazine	2 g
Phenylacetone	1 g
Racemethorphan	2 g
Remifentanil	500 g
Secobarbital	67,000 g
Sufentanil	10,300 g
Thebaine	126,000,000 g

The Deputy Administrator further orders that aggregate production quotas for all other schedules I and II controlled substances included in 21 CFR 1308.11 and 1308.12 be established at zero.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*. The establishment of aggregate production quotas for schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

This action meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: December 19, 2008.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E8–30807 Filed 12–24–08; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–099)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of information collection cancellation.

SUMMARY: We are cancelling FR Notice 08–093, Information Collection Title: TITLE IX Survey, published at 73 FR 70678, November 21, 2008, because we determined the need to implement compliance programs under three additional grant-related civil rights laws for which NASA has regulations, i.e., Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. In FY 2009, NASA will stand-up compliance programs involving at least one onsite compliance review pursuant to each of these laws. We also need to issue a notice of information collection that can support our compliance activities under all four laws, reflecting the differing coverage under each of the laws.

FOR FURTHER INFORMATION CONTACT: Dr. Walter Kit, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JF0000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov*.

Walter Kit,

NASA Clearance Officer.

[FR Doc. E8–30732 Filed 12–24–08; 8:45 am]

BILLING CODE 7510–13–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–25]

Foster Wheeler Environmental Corporation; Idaho Spent Fuel Facility; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring and Opportunity for a Hearing

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of indirect license transfer application and opportunity to request a hearing.

FOR FURTHER INFORMATION, CONTACT: Shana Helton, Senior Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. Telephone: (301) 492–3284; fax number: (301) 492–3348; e-mail: *shana.helton@nrc.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 72.50 approving the indirect transfer of Special Nuclear Materials (SNM) License No. 2512 for the Idaho Spent Fuel (ISF) Facility independent spent fuel storage installation (ISFSI) currently held by Foster Wheeler Environmental Corporation (FWENC).

According to an application for approval filed by FWENC, the indirect transfer of control of FWENC's license would result from a planned corporate restructuring whereby Foster Wheeler AG will become the new corporate parent holding company, replacing FWENC's current parent holding company, Foster Wheeler Ltd. Foster Wheeler Ltd. is a corporation duly organized under the laws of Bermuda, with shares that are widely held and publicly traded in the United States on the NASDAQ Global Select Market. The proposed new parent holding company, Foster Wheeler AG, is a corporation duly organized under the laws of Switzerland.

No physical changes to the ISF facility or operational changes are being proposed in the application. Additionally, according to the application, the proposed restructuring will not impact the operations of FWENC, nor will it impact any of the terms and conditions under which it holds SNM–2512.

Pursuant to 10 CFR 72.50, no license or any part included in a license issued under 10 CFR Part 72 for an ISFSI shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed restructuring will not affect the qualifications of the licensee to hold the license, and that the transfer is consistent with applicable provisions of law and the regulations and orders issued by the Commission.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by the Commission's action on the application may request a hearing and intervention via electronic submission through the NRC E-filing system. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/ehd_proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this license transfer application, see the application dated December 11, 2008, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agency wide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. The ADAMS Accessions number for the license transfer application is ML083500374. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland this 19th day of December 2008.

For the Nuclear Regulatory Commission.

Shana Helton,

Senior Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transport, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E8–30777 Filed 12–24–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–039]

PPL Bell Bend, LLC; Acceptance for Docketing of an Application for Combined License for Bell Bend Nuclear Power Plant

By letter dated October 10, 2008, as supplemented by letters dated November 18, 24, 2008, and December 1, 8, 2008, PPL Bell Bend, LLC submitted an application to the U.S. Nuclear Regulatory Commission (NRC) for a combined license (COL) for a single unit of the U.S. Evolutionary Power Reactor (U.S. EPR) in accordance with the requirements contained in Title 10 of the Code of Federal Regulations (10 CFR) Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' This reactor will be identified as Bell Bend Nuclear Power Plant and is to be located on a site adjacent to the existing Susquehanna Steam Electric Station in Luzerne County, Pennsylvania. A notice of receipt and availability of this application was previously published in the **Federal Register** (73 FR 67214) on November 13, 2008.

The NRC staff has determined that PPL Bell Bend, LLC has submitted

information in accordance with 10 CFR Part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,'' and 10 CFR Part 52 that is acceptable for docketing. The Docket Number established is 52–039.

The NRC staff will perform a detailed technical review of the application. Docketing of the application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application. The Commission will conduct a hearing in accordance with Subpart L, ''Informal Hearing Procedures for NRC Adjudications,'' of 10 CFR Part 2 and will receive a report on the COL application from the Advisory Committee on Reactor Safeguards in accordance with 10 CFR 52.87, ''Referral to the Advisory Committee on Reactor Safeguards (ACRS).'' If the Commission finds that the COL application meets the applicable standards of the Atomic Energy Act and the Commission's regulations, and that required notifications to other agencies and bodies have been made, the Commission will issue a COL, in the form and containing conditions and limitations that the Commission finds appropriate and necessary.

In accordance with 10 CFR part 51, the Commission will also prepare an environmental impact statement for the proposed action. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be included in a future **Federal Register** notice.

Finally, the Commission will announce in a future **Federal Register** notice the opportunity to petition for leave to intervene in the hearing required for this application by 10 CFR 52.85.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and will be accessible electronically through the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html*. The application is also available at *http://www.nrc.gov/reactors/new-reactors/col.html*. Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 19th day of December 2008.

For the Nuclear Regulatory Commission.

Michael A. Canova,

Project Manager, U.S. EPR Projects Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E8–30776 Filed 12–24–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–10716]

Notice of Consideration of Amendment Request for Decommissioning of the Sigma-Aldrich Chemical Company's Fort Mims Facility, Maryland Heights, MO and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of amendment request and opportunity to request a hearing.

DATES: A request for a hearing must be filed by February 27, 2009.

FOR FURTHER INFORMATION CONTACT: George M. McCann, Senior Health Physicist, Materials Control, ISFSI, and Decommissioning Branch, Division of Nuclear Materials Safety, Region III, U.S. Nuclear Regulatory Commission, 2443 Warrenville Road, Lisle, Illinois 60532; Telephone: (630) 829–9856; fax number: (630) 515–1259; or e-mail: *mike.mccann@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Byproduct Material License No. 24–16273–01 issued to the Sigma-Aldrich Chemical Company (the Licensee) pursuant to 10 CFR Part 30. By application dated October 22, 2008, the Licensee requested authorization to decommission its Fort Mims Facility, (the Facility) at 11452 Fort Mims Drive, Maryland Heights, Missouri, under its proposed Decommissioning Plan (DP) submitted as part of the application (see ADAMS ML083010187).

The two-story Facility consists of approximately 20,000 square feet of laboratory and office space. The Facility is located on a 1 acre parcel in a commercial/light industrial park. Radioactive materials were used in specific areas within this Facility since 1975. Actual production activities were suspended at the facility on September 30, 2008. Radioactive materials usage at the site consisted of research and development activities as defined in 10 CFR 30.4 and storage, processing and use in the production of labeled compounds for distribution to authorized recipients. The radioactive materials used at the Fort Mims facility consisted of carbon-14 and hydrogen-3.

An NRC administrative review, documented in a letter to the Sigma-Aldrich Chemical Company dated November 25, 2008, found the DP acceptable to begin a technical review.

If the NRC approves the DP, the approval will be documented in an amendment to NRC License No. 24–16273–01. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment and/or an Environmental Impact Statement. After the Commission verifies that the release criteria have been met, the Facility Operating License No. 24–16273–01 will be terminated.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a license amendment regarding the decommissioning of the Licensee's Fort Mims Facility. Any person whose interest may be affected by this proceeding, and who desires to participate as a party, must file a request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing, in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49139, Aug. 28, 2007). The E-Filing rule requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requester must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the

petitioner/requester (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requester will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requester has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(c)(1)(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include social security numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The formal requirements for documents contained in 10 CFR 2.304(c)–(e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3), then the requirements for paper documents, set forth in 10 CFR 2.304(b) must be met.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by February 27, 2009.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial, or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the DP that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E-Filing rule, within ten days of the date the contention is filed, and designate a representative who shall have the

authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

Submittal Letter dated October 22, 2008: ML083010187.

Sigma-Aldrich Fort Mims Facility Decontamination and Decommissioning Plan: ML083010187.

Sigma-Aldrich Fort Mims Facility Soil Sampling and Analysis Plan: ML083010187.

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*. These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 8th day of December 2008.

For the Nuclear Regulatory Commission.

Christine A. Lipa,

Chief, Materials Control, ISFSI and Decommissioning Branch, Division of Nuclear Materials Safety, Region III.

[FR Doc. E8–30775 Filed 12–24–08; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 22c–2, SEC File No. 270–541, OMB Control No. 3235–0620.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 22c–2 (17 CFR 270.22c–2 ''Mutual Fund Redemption Fees'') under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Investment Company Act'' or ''Act'') requires the board of directors (including a majority of independent directors) of most registered investment companies (''funds'') to either approve a redemption fee of up to two percent or determine that imposition of a redemption fee is not necessary or appropriate for the fund. Rule 22c–2 also requires a fund to enter into written agreements with their financial intermediaries (such as broker-dealers and retirement plan administrators) under which the fund, upon request, can obtain certain shareholder identity and trading information from the intermediaries. The written agreement must also allow the fund to direct the intermediary to prohibit further purchases or exchanges by specific shareholders that the fund has identified as being engaged in transactions that violate the fund's market timing policies. These requirements enable funds to obtain the information that they need to monitor the frequency of short-term trading in omnibus accounts and enforce their market timing policies.

The rule includes three ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[1] First, the rule requires boards to either approve a redemption fee of up to two percent or determine that imposition of a redemption fee is not necessary or appropriate for the fund. Second, funds must enter into information sharing agreements with all of their ''financial intermediaries'' [2] and maintain a copy of the written information sharing agreement with each intermediary in an easily accessible place for six years. Third, pursuant to the information sharing agreements, funds must have systems that enable them to request frequent trading information upon demand from their intermediaries, and to enforce any restrictions on trading required by funds under the rule.

The collections of information created by Rule 22c–2 are necessary for funds to effectively assess redemption fees, enforce their policies in frequent trading, and monitor short-term trading, including market timing, in omnibus accounts. These collections of information are mandatory for funds that redeem shares within seven days of purchase. The collections of information also are necessary to allow Commission staff to fulfill its examination and oversight responsibilities.

Rule 22c–2(a)(1) requires the board of directors of all registered investment companies and series thereof (except for money market funds, ETFs, or funds that affirmatively permit short-term trading of its securities) to approve a redemption fee for the fund, or instead make a determination that a redemption fee is either not necessary or appropriate for the fund. Commission staff understands that the boards of all funds currently in operation have undertaken this process for the funds they currently oversee, and the rule does not require boards to review this determination periodically once it has been made. Accordingly, we expect that only boards of newly registered funds or newly created series thereof would undertake this determination. Commission staff estimates that approximately 300 funds or series thereof (excluding money market funds and ETFs) are newly formed each year and would need to make this determination.

Commission staff estimates that it takes approximately 2 hours of the boards' time, as a whole, to approve a redemption fee or make the required determination. In addition, Commission staff estimates that it takes compliance personnel of the fund approximately 8 hours to prepare trading, compliance, and other information regarding the fund's operations to enable the board to make its determination, and takes internal counsel of the fund approximately 3 hours to review this information and present its

[1] 44 U.S.C. 3501–3520.

[2] The rule defines a Financial Intermediary as: (i) Any broker, dealer, bank, or other person that holds securities issued by the fund in nominee name; (ii) a unit investment trust or fund that invests in the fund in reliance on section 12(d)(i)(E) of the Act; and (iii) in the case of a participant directed employee benefit plan that owns the securities issued by the fund, a retirement plan's administrator under section 316(A) of the Employee Retirement Security Act of 1974 (29 U.S.C. 1002(16)(A) or any person that maintains the plans' participant records. Financial Intermediary does not include any person that the fund treats as an individual investor with respect to the fund's policies established for the purpose of eliminating or reducing any dilution of the value of the outstanding securities issued by the fund. Rule 22c–2(c)(1).

recommendations to the board. Therefore, for each fund board that undertakes this determination process, Commission staff estimates it expends approximately 13 hours.[3] As a result, Commission staff estimates that the total time spent for all funds on this process is 3900 hours.[4]

Rule 22c–2(a)(2) requires a fund to enter into information sharing agreements with each of its financial intermediaries. Commission staff understands that all currently registered funds have already entered into such agreements with their intermediaries. Funds enter into new relationships with intermediaries from time to time, however, which requires them to enter into new information sharing agreements. Commission staff understands that, in general, funds enter into information-sharing agreement when they initially establish a relationship with an intermediary, which is typically executed as an addendum to the distribution agreement. Commission staff estimates that there are approximately 7254 open-end fund series currently in operation (excluding money market funds and ETFs). However, the Commission staff understands that most shareholder information agreements are entered into by the fund group (a group of funds with a common investment adviser), and estimates that there are currently 680 currently active fund groups.[5] Commission staff estimates that, on average, each active fund group enters into relationships with approximately 5 new intermediaries each year. Commission staff understands that funds generally use a standard information sharing agreement, drafted by the fund or an outside entity, and modifies that agreement according to the requirements of each intermediary. Commission staff estimates that negotiating the terms and entering into an information sharing agreement takes a total of approximately 4 hours of attorney time per intermediary (representing 2.5 hours of fund attorney time and 1.5 hours of intermediary attorney time). Accordingly, Commission staff estimates that each existing fund group expends 20 hours each year[6] to enter into new information sharing agreements, and all existing fund groups incur a total of 13,600 hours.

In addition, newly created funds advised by new entrants (effectively new fund groups) must enter into information sharing agreements with all of their financial intermediaries. Commission staff estimates that there are approximately 22 new funds or fund groups that form each year that will have to enter into information sharing agreements with each of their intermediaries.[7] Commission staff estimates that funds and fund groups formed by new advisers typically have relationships with significantly fewer intermediaries than existing fund groups, and estimates that new fund groups will typically enter into approximately 100 information sharing agreements with their intermediaries when they begin operations.[8] As discussed previously, Commission staff estimates that it takes approximately 4 hours of attorney time per intermediary to enter into information sharing agreements. Therefore, Commission staff estimates that each newly formed fund group will incur 400 hours of attorney time,[9] and all newly formed fund groups will incur a total of 8800 hours to enter into information sharing agreements with their intermediaries.[10]

Rule 22c–2(a)(3) requires funds to maintain records of all information sharing agreements for 6 years in an easily accessible place. Commission staff estimates that there are approximately 7254 open-end fund series currently in operation (excluding money market funds and ETFs). However, the Commission staff anticipates that most shareholder information agreements will be stored at the fund group level and estimates that there are currently approximately 680 fund groups. Commission staff estimates that maintaining records of information sharing agreements requires approximately 10 minutes of time spent by a general clerk per fund, each year. Accordingly, Commission staff estimates that all funds will incur approximately 113 hours[11] in complying with the recordkeeping requirement of rule 22c–2(a)(3).

Therefore, Commission staff estimates that to comply with the information sharing agreement requirements of rule 22c–2(a)(1) and (3) requires a total of 22,513 hours.[12]

The Commission staff estimates that on average, each fund group requests shareholder information once a week, and gives instructions regarding the restriction of shareholder trades every day, for a total of 417 responses related to information sharing systems per fund group each year, and a total 283,560 responses for all fund groups annually. In addition, the staff estimates that funds make 300 responses related to board determinations, 3400 responses related to new intermediaries of existing fund groups, 2200 responses related to new fund group information sharing agreements, and 680 responses related to recordkeeping, for a total of 6580 responses related to the other requirements of rule 22c–2. Therefore, the Commission staff estimates that the total number of responses is 290,140 (283,560 + 6580 = 290,140). Commission staff also estimates that there are 7254 potential respondents making 290,140 responses each year. The Commission staff estimates that the total hour burden for rule 22c–2 is 26,413 hours.[13]

Rule 22c–2 requires funds to enter into information sharing agreements with their intermediaries that enable funds to, upon request (i) be provided certain information regarding shareholders and their trades that are held through a financial intermediary or an indirect intermediary, and (ii) require the intermediary to execute instructions from the fund restricting or prohibiting further purchases or exchanges by shareholders that violate the fund's frequent trading policies. As a result of this requirement, some funds and intermediaries have had to develop and maintain information sharing, monitoring, and order execution systems (collectively ''information sharing systems'').

In general, the staff estimates that the typical charges involved in operating and maintaining information sharing systems average 25 cents for every 100

[3] This calculation is based on the following estimates: (2 hours of board time + 3 hours of internal counsel time + 8 hours of compliance time = 13 hours).

[4] This calculation is based on the following estimates: (13 hours × 300 funds = 3900 hours).

[5] ICI, 2008 Investment Company Fact Book at Fig 1.7 (2008) (*http://www.ici.org/stats/latest/2008_factbook.pdf*).

[6] This estimate is based on the following calculations: (4 hours × 5 new intermediaries = 20 hours).

[7] ICI, 2008 Investment Company Fact Book at Fig 1.7 (2008) (*http://www.ici.org/stats/latest/2008_factbook.pdf*).

[8] Commission staff understands that funds generally use a standard information sharing agreement, drafted by the fund or an outside entity, and then modifies that agreement to according the requirements of each intermediary.

[9] This estimate is based on the following calculations: (4 hours × 100 intermediaries = 400 hours).

[10] This estimate is based on the following calculations: (22 fund groups × 400 hours + 8800 hours).

[11] This estimate is based on the following calculations: (10 minutes × 680 fund groups = 6800 minutes); (6800 minutes/ 60 = 113 hours).

[12] This estimate is based on the following calculations: (13,600 hours + 8800 hours + 113 hours = 22,513 hours).

[13] This estimate is based on the following calculations: (3900 hours (board determination) + 22,513 hours (information sharing agreements) = 26,413 total hours).

account transactions requested. The Commission staff estimates that, on average, each fund group requests information for 100,000 transactions each week, incurring costs of $250 weekly, or $13,000 a year.[14] In addition, the Commission staff estimates that funds pay access fees to use these information sharing systems (or comparable internal costs) of approximately $30,000 each year. The Commission staff therefore estimates that a fund group would typically incur approximately $43,000 in costs each year related to the operation and maintenance of information sharing systems required by rule 22c–2. The Commission staff has previously estimated that there are approximately 680 fund groups currently active, and therefore estimates that all fund groups incur a total of $29,240,000 in ongoing costs each year related to maintaining and operating information sharing systems.[15]

Commission staff estimates that it requires approximately $100,000 to purchase or develop and implement such an information sharing system for the first time. Commission staff has previously estimated that approximately 22 funds or fund groups are formed each year managed by new advisers, and therefore estimates that all these funds would incur total costs of approximately $2,200,000.[16]

Responses provided to the Commission will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program. Responses provided in the context of the Commission's examination and oversight program are generally kept confidential. Complying with the information collections of rule 22c–2 is mandatory for funds that redeem their shares within 7 days of purchase. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: December 17, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–30782 Filed 12–24–08; 8:45 am]

BILLING CODE 8011–01–P

[14] This estimate is based on the following calculations: (100,000 transaction requests × 0.0025¢ = $250); ($250 × 52 weeks = $13,000).

[15] This estimate is based on the following calculation: (680 fund groups × $43,000 = $29,240,000).

[16] This estimate is based on the following estimate: ($100,000 × 22 new fund groups = $2,200,000).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59114; File No. SR–BATS–2008–013]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Change the Name of BATS Holdings, Inc.

December 17, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 11, 2008, BATS Exchange, Inc. (''BATS'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. BATS has designated the proposed rule change as one being concerned solely with the administration of the Exchange pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6) [sic].

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend: (i) Its Rule 2.10, (ii) the Amended and Restated By-Laws of the Exchange, (iii) the Amended and Restated Certificate of Incorporation of BATS Holdings, Inc., (iv) the Amended and Restated Bylaws of BATS Holdings, Inc., and (v) the Investor Rights Agreement of BATS Holdings, Inc. (collectively, the ''Operative Documents'') to change the name of BATS Holdings, Inc. to BATS Global Markets, Inc.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Operative Documents to change the name of BATS Holdings, Inc., and references thereto, to BATS Global Markets, Inc. In connection with the filing of the Amended and Restated Certificate of Incorporation reflecting the name change, certain additional changes have been made to comply with Delaware Corporate law. In addition, the address listed for BATS Global Markets, Inc. in the Investor Rights Agreement has been updated to reflect a new location.

The name change from BATS Holdings, Inc. to BATS Global Markets, Inc. is a non-substantive change. No changes to the ownership or structure of the Exchange or BATS Holdings, Inc. have taken place.

2. Statutory Basis

The Exchange believes the proposal is consistent with the requirements of the

Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[5] In particular, for the reasons described above, the proposed change is consistent with Section 6(b)(5) of the Act,[6] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Because it is concerned solely with the administration of the Exchange, the foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(3) thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BATS–2008–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2008–013. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BATS. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2008–013 and should be submitted on or before January 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–30788 Filed 12–24–08; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78(f)(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(3).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59108; File No. SR–FINRA–2008–063]

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Adoption of NASD Rules 12805 and 13805 as FINRA Rules in the New Consolidated FINRA Rulebook

December 16, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 15, 2008, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as concerned solely with the administration of the self-regulatory organization under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt Rule 12805 of the NASD Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and Rule 13805 of the NASD Code of Arbitration Procedure for Industry Disputes (''Industry Code'') (collectively, the ''NASD Codes'') as FINRA rules into a new consolidated rulebook. Below is the text of Rules 12805 and 13805. FINRA is not proposing any changes to the rule text.

* * * * *

Customer Code

12805. Expungement of Customer Dispute Information under Rule 2130

In order to grant expungement of customer dispute information under Rule 2130, the panel must:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(3).

(a) Hold a recorded hearing session (by telephone or in person) regarding the appropriateness of expungement. This paragraph will apply to cases administered under Rule 12800 even if a customer did not request a hearing on the merits.

(b) In cases involving settlements, review settlement documents and consider the amount of payments made to any party and any other terms and conditions of a settlement.

(c) Indicate in the arbitration award which of the Rule 2130 grounds for expungement serve(s) as the basis for its expungement order and provide a brief written explanation of the reason(s) for its finding that one or more Rule 2130 grounds for expungement applies to the facts of the case.

(d) Assess all forum fees for hearing sessions in which the sole topic is the determination of the appropriateness of expungement against the parties requesting expungement relief.

* * * * *

Industry Code

13805. Expungement of Customer Dispute Information under Rule 2130

In order to grant expungement of customer dispute information under Rule 2130, the panel must:

(a) Hold a recorded hearing session (by telephone or in person) regarding the appropriateness of expungement. This paragraph will apply to cases administered under Rule 13800 even if a claimant did not request a hearing on the merits.

(b) In cases involving settlements, review settlement documents and consider the amount of payments made to any party and any other terms and conditions of a settlement.

(c) Indicate in the arbitration award which of the Rule 2130 grounds for expungement serve(s) as the basis for its expungement order and provide a brief written explanation of the reason(s) for its finding that one or more Rule 2130 grounds for expungement applies to the facts of the case.

(d) Assess all forum fees for hearing sessions in which the sole topic is the determination of the appropriateness of expungement against the parties requesting expungement relief.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is in the process of developing the new consolidated rulebook (''Consolidated FINRA Rulebook'').[5] That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive technical changes in the Consolidated FINRA Rulebook.

On September 25, 2008, the Commission approved, among other matters, a proposed rule change to adopt the NASD Codes as FINRA rules into a new consolidated rulebook.[6] Those rules will be implemented on December 15, 2008.[7]

The Commission approved new Rules 12805 and 13805 of the NASD Codes, which FINRA has not yet made effective.[8] In a Regulatory Notice to be issued on December 15, 2008, FINRA will announce the effective date for new Rules 12805 and 13805. The proposed rule change would permit FINRA to include new Rules 12805 and 13805 with the rules that will be implemented in the Consolidated FINRA Rulebook on December 15, 2008.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and paragraph (f)(3) of Rule 19b–4 thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2008–063 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

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[5] The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). For more information about the rulebook consolidation process, *see* FINRA *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

[6] *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving File No. SR–FINRA–2008–021).

[7] *See* FINRA *Regulatory Notice* 08–57 (October 2008) (FINRA Announces SEC Approval and Effective Date for New Consolidated FINRA Rules).

[8] *See* Securities Exchange Act Release No. 58886 (October 30, 2008), 73 FR 66086 (November 6, 2008) (Order Approving File No. SR–FINRA–2008–010).

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(3).

All submissions should refer to File Number SR–FINRA–2008–063. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2008–063 and should be submitted on or before January 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence Harmon,

Acting Secretary.

[FR Doc. E8–30785 Filed 12–24–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59119; File No. SR–FINRA–2008–061]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 5240 (Anti Intimidation / Coordination) in the Consolidated FINRA Rulebook

December 18, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 11, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt Interpretive Material (''IM'') 2110–5 (Anti-Intimidation/Coordination) as a FINRA rule in the consolidated FINRA rulebook without material change. The proposed rule change would renumber IM–2110–5 as FINRA Rule 5240 in the consolidated FINRA rulebook.

The text of the proposed rule change is attached as Exhibit 5.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[4] FINRA is proposing to adopt IM–2110–5 as FINRA Rule 5240 without material change.

In 1996, the SEC issued a report pursuant to Section 21(a) of the Act[5] regarding NASD, the Nasdaq market, and the activities of certain Nasdaq market makers that impeded price competition in the Nasdaq market.[6] In conjunction with the report, the SEC also issued an order pursuant to Section 19(h)(1) of the Act[7] that made findings regarding the activities and imposed remedial sanctions on FINRA (then NASD).[8] As part of that order, FINRA agreed to certain undertakings, including an undertaking to ''propose a rule or rule interpretation for Commission approval which expressly makes unlawful the coordination by or among market makers of their quotes, trades and trade reports, and which prohibits retribution or retaliatory conduct for competitive actions of another market maker or other market participant.'' To comply with this undertaking, FINRA proposed IM–2110–5, which was approved by the SEC on July 17, 1997.[9]

IM–2110–5 identifies three general types of conduct that are inconsistent with just and equitable principles of trade:[10] (1) Coordinating activities by members involving quotations, prices, trades, and trade reporting (*e.g.*, agreements to report trades inaccurately or maintain certain minimum spreads); (2) ''directing or requesting'' another member to alter prices or quotations; and (3) engaging in conduct that threatens, harasses, coerces, intimidates, or otherwise attempts improperly to influence another member or person associated with a member. The IM also sets forth seven specific exclusions that identify bona fide commercial activity that is permitted (*e.g.*, bona fide

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that while provided in Exhibit 5, the text of the proposed rule change is also available at FINRA, the Commission's Public Reference Room, and *http://www.finra.org*.

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

[5] 15 U.S.C. 78u(a).

[6] *See* Report pursuant to Section 21(a) of the Exchange Act regarding NASD and The Nasdaq Stock Market, Inc., Securities Exchange Act Release No. 37542 (August 8, 1996).

[7] 15 U.S.C. 78s(h)(1).

[8] *See* In the Matter of National Association of Securities Dealers, Inc., Administrative Proceeding File No. 3–9056, Securities Exchange Act Release No. 37538 (August 8, 1996).

[9] *See* Securities Exchange Act Release No. 38845 (July 17, 1997), 62 FR 39564 (July 23, 1997).

[10] NASD Rule 2110 requires members to ''observe high standards of commercial honor and just and equitable principles of trade.'' On September 25, 2008, the Commission approved adopting NASD Rule 2110 into the Consolidated FINRA Rulebook as FINRA Rule 2010 without substantive change. *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008). That rule change will take effect on December 15, 2008. *See* FINRA *Regulatory Notice* 08–57 (October 2008). The Commission notes that this rule change became effective on December 15, 2008.

negotiations and unilateral decisions regarding spreads).

Because FINRA adopted IM–2110–5 to fulfill part of its 1996 settlement agreement with the SEC, the proposed rule change would transfer IM–2110–5 into the Consolidated FINRA Rulebook as FINRA Rule 5240. Although FINRA is not proposing material changes to the rule, one of the minor changes FINRA is proposing is to add the phrase ''or other person'' to paragraphs (a)(1) and (a)(3) of the rule to clarify that coordination with or intimidation of a non-FINRA member would be covered by the rule.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In addition, FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(11) of the Act,[12] which requires, among other things, that FINRA rules must be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations. FINRA believes that the rule properly emphasizes certain types of misconduct that can impair the fair and orderly functioning of the market and thus serves as an important provision to help ensure the integrity of information placed into the market. The rule being adopted as part of the Consolidated FINRA Rulebook previously has been found to meet the statutory requirements, and FINRA believes the rule has since proven effective in achieving the statutory mandates.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78*o*–3(b)(11).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2008–061 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2008–061. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2008–061 and should be submitted on or before January 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–30790 Filed 12–24–08; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59111; File No. SR-FICC–2007–04]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change Relating to Applicant and Member Disqualification Criteria

December 17, 2008.

I. Introduction

On April 30, 2007, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On February 7, 2008, and March 19, 2008, FICC amended the proposed rule change. On July 9, 2008, the Commission published notice of the proposed rule change to solicit comments from interested persons.[2] The Commission received two comment letters in response to the proposed rule change.[3] For the reasons discussed

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 58128, 73 FR 40893 (July 16, 2008).

[3] Letters from Susanne Trimbath, Ph.D., STP Advisory Services, LLC (Aug. 27, 2008) and Nikki M. Poulos, Managing Director, General Counsel, FICC (Nov. 7, 2008).

below, the Commission is approving the proposed rule change, as amended.

II. Description

The proposed rule change will amend FICC's Government Securities Division's (''GSD'') and Mortgage Backed Securities Division's (''MBSD'') (collectively, ''Divisions'') rules concerning applicant and member disqualification criteria by making the Divisions' rules consistent with the rules of FICC's affiliated clearing agencies, the National Securities Clearing Corporation (''NSCC'') and The Depository Trust Company (''DTC''). The proposed rule changes cover the following areas:

1. Management Consideration of Disqualification Criteria [4]

Prior to this rule change, GSD's membership qualification rules required FICC's Board of Directors to determine whether the presence of certain negative factors affecting a membership application should constitute the basis for denying membership to such applicant. Information that might have disqualified an applicant (referred to in GSD's rules as ''disqualification criteria'') include the applicant being subject to a statutory disqualification [5] or conviction of various crimes such as bribery. The disqualification criteria in GSD's rules similarly apply as standards for continued membership.

Under the rule change, FICC will amend GSD's disqualification criteria to allow FICC's management, instead of FICC's Board, to determine whether the presence of a potential disqualifier should prevent an entity from obtaining or continuing membership in GSD. Such change would conform to the rules of MBSD, DTC, and NSCC, which allow such determinations to be made by management.

2. Associated and Affiliated Persons

GSD's and MBSD's rules also apply certain applicant and member disqualification criteria to persons ''associated'' (in GSD's rules) or ''affiliated'' (in MBSD's rules) with the applicant or member firm. FICC states that it is not always practical for it to ascertain which individuals are ''associated'' or ''affiliated'' with a particular entity and therefore proposes to amend these rules to conform them to its internal surveillance procedures and make them consistent across both Divisions. Accordingly, references to persons ''associated'' or ''affiliated'' with the member or applicant are being changed to references to ''controlling management,'' which include those officers of the applicant or member that are currently screened by FICC's Risk Management department pursuant to internal procedures.[6] In addition, FICC will add language to its rules to require applicants to inform FICC as to any member of its controlling management that is or becomes subject to statutory disqualification.

3. Monitoring of Objective Disqualification Criteria

GSD's disqualification criteria is being amended to reflect an approach that such criteria should be objectively and practically monitored. Specifically, FICC will delete one disqualification criterion that refers to an applicant being subject to ''closer than normal'' surveillance by a regulatory body. FICC states that this event might not be reported in a regulatory background check.

In addition, prior to this rule change, MBSD's rules contained only two criteria that could be the basis for denial of a membership application. These were: (i) An applicant's subjection to a statutory disqualification or similar order by another examining authority and (ii) an applicant or an associated person of the applicant making a misstatement of a material fact in connection with its membership application or thereafter. Under this rule change, MBSD will add GSD's remaining disqualification criteria relating to unlawful acts by the applicant's or member's Controlling Management or the applicant's or member's suspension or expulsion from a self-regulatory organization. These additions to MBSD's rules will result in both Divisions having identical disqualification criteria.

Finally, FICC will add a provision to both Divisions' rules that clarifies FICC's right to deny membership to an applicant or member if FICC learns of any factor or circumstance that might impact the suitability of that particular applicant or member as a participant.

4. Additional Changes

FICC will make the following changes to provide additional uniformity among the rules of the Divisions, NSCC, and DTC:

(i) Adding to both Divisions' disqualification criteria violations of the Investment Company Act and Investment Advisers Act,[7] since those statutes apply to their current membership base.

(ii) Amending GSD's definition of ''self-regulatory organization'' to include those entities that are foreign equivalents. The same definition for ''self-regulatory organization'' would be added to MBSD's rules.

(iii) Removing the word ''willful'' from both Divisions' disqualification criteria concerning an applicant's or an applicant's controlling management's violation of the specified federal statutes or any rule or regulation promulgated thereunder. FICC believes that a violation of these provisions, whether or not willful, should be considered as a potential disqualification criterion.

(iv) Deleting references in GSD's rules to Section 153 of Chapters 25 and 47 of Title 18 of the United States Code (''Code'') because the crimes covered by these statutes (i.e., embezzlement, forgery, false statements, etc.) are captured by the current disqualification criteria. References to those portions of the Code that deal with mail and wire fraud (Sections 1341, 1342 and 1343) would remain. This provision will also be added to MBSD's rules.

Changes are being made to the cease to act provisions of GSD's rules (Rule 21, ''Restrictions on Access to Services'') in order to ensure consistency within the rules and across the Divisions.

III. Comment Letters [8]

Susanne Trimbath, PhD., of STP Advisory Services, LLC, suggested that FICC should also consider an entity's ability to deliver securities for settlement when determining an applicant's or member's suitability as a participant. Ms. Trimbath pointed out that this recommendation is consistent with the Section 17A(a)(5)(C) of the Act [9] and claimed thatthe cost of FICC members failing to deliver securities at settlement is significant and harms fellow FICC members and investors.

Nikki Poulos, FICC's General Counsel, responded to Ms. Trimbath's comment. While Ms. Poulos acknowledged securities transactions fails as a serious issue for the securities industry, she argued that FICC has attempted to reduce the risks posed by fails.[10]

[4] GSD Rule 2A, Section 3(d).

[5] The definition of ''statutory disqualification'' is found at 15 U.S.C. 78c(a)(39).

[6] New GSD Rule 1 and MBSD Article I (''The term 'controlling management' shall mean the Chief Executive Officer, the Chief Financial Officer, and the Chief Operations Officer, or their equivalents, of an applicant of Participant.'').

[7] 15 U.S.C. 80a–1 *et seq.* and 15 U.S.C. 80b–1 *et seq.*, respectively.

[8] See *supra* note 3.

[9] 15 U.S.C. 78q–1(a)(c)(5) (''A registered clearing agency may summarily suspend and close the accounts of a participant who * * * is in default of any delivery of funds or securities to the clearing agency.'').

[10] *See, e.g.*, Securities Exchange Act Release Nos. 52157 (July 28, 2005), 70 FR 44959 (Aug. 4, 2005)

Continued

Moreover, Ms. Poulos believes that including a participant's fails as a criterion by which FICC would have to assess participation ''would only create more risks in that these open obligations would be processed (or not) outside of FICC, without the benefit of, i.e., re-netting.''

IV. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[11] The proposed rule change should enhance FICC's surveillance and assessment of applicants' and members' regulatory conditions. In addition, the proposed rule change will harmonize both of FICC's division's application and membership requirements and will make clear to all applicants and members of the breadth of information that FICC will require and review in order to develop an accurate risk profile to evaluate an applicant's or member's condition. Accordingly, the proposed rule should strengthen FICC's ability to mitigate financial risk to itself and to its members and therefore should enhanced FICC's ability to assure the safeguarding of securities and funds that are in its custody or control or for which it is responsible.

The Commission also agrees that the issue of ''fails'' is a serious one for the securities industry. The Commission will continue to monitor developments in this area and will use its regulatory authority if needed to better ensure that appropriate safeguards are in place to facilitate the prompt and accurate clearance and settlement of securities transactions and to protect investors. In this regard, the Commission expects FICC, as a self-regulatory organization and registered clearing agency, to similarly continue to scrutinize its participants' effectiveness in delivering funds and securities in fulfillment of their obligations when using FICC's clearing facilities.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A[12] of the Act and the rules and regulations thereunder.[13]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–FICC–2007–04), as amended, be and hereby is approved. For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–30786 Filed 12–24–08; 8:45 am]

BILLING CODE 8011–01–P

[FICC–2005–11] (establishing a daily fail netting process basis allowing participants to net outstanding fail obligations with current settlement activity in order to reduce risk exposure among FICC participants) and 54487 (Sept. 22, 2006), 71 FR 58025 (Oct. 2, 2006) [FICC–2005–17] (FICC assumes certain fails of blind brokered repurchase transactions at GSD and obtains financing as necessary in connection with such assumptions).

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 15 U.S.C. 78q–1.

[13] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59105; File No. SR–NSCC–2008–08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Amend Rules to Add an Agreement from Fund Members that Submit Mutual Fund Profile Information

December 16, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 30, 2008, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change File No. SR–NSCC–2008–08. The Commission is publishing this notice to solicit comments from interested parties on the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the NSCC.[2]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC is proposing to amend its rules to add an agreement that requires NSCC fund members to have taken reasonable steps to validate the accuracy of the data they submit to the Mutual Fund Profile Service database.

[1] 15 U.S.C. 78s(b)(1).

[2] The exact text of the NSCC's proposed rule change can be found at *http://www.dtcc.com/downloads/legal/rule_filings/2008/nscc/2008-08.pdf.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Mutual Fund Profile Service (''Profile'') is a central data source for comprehensive fund prospectus and operational information relating to mutual funds. The repository is a recognized industry standard for information critical to the distribution of mutual funds in the third-party market.

Profile is organized into three databases: (1) Security Issue Database (containing information such as Security ID number, security name, fee structure, investment objectives, breakpoint schedule data, and blue sky eligibility); (2) Participant Database (containing contact information, NSCC processing capabilities and restrictions or requirements); and (3) Distribution Database (containing projected or actual distributions, capital gains and dividend amounts and details, and commission information). NSCC fund members input data regarding their mutual funds into the Security Issue and Participant Profile databases. Profile is then accessed by the NSCC members that are mutual fund distributors.

NSCC has recently enhanced the Security Issue Database in Profile to include new data fields needed by distributors and to re-engineer the structure of the data hierarchy to be easier for fund members to populate their data. Some of the enhancements to the Profile database were initiated in response to a recommendation in the Report (''Report'') of The Joint NASD/Industry Task Force on Breakpoints (''Task Force'').[4] NSCC has also adopted

[3] The Commission has modified portions of the text of the summaries prepared by the NSCC.

[4] The Task Force was formed in 2003 by the National Association of Securities Dealers (''NASD'', now ''FINRA'') with the participation of major fund companies, broker-dealers, NSCC, the Securities Industries Association and the

measures to assist funds members in validating their data once it is in the Profile database by developing reports that note probable inconsistencies among related data fields, by arranging for free access by fund members to a vendor tool that verifies Profile data, and by reaching out to fund members in the form of personal contacts and an on-line web demonstration on populating data into the Profile database.

Consistent with its efforts to expand Profile's capabilities as a comprehensive and accurate source for the mutual fund distribution industry, NSCC is now proposing to amend its rules to add an agreement that requires NSCC fund members to have taken reasonable steps to validate the accuracy of their data they submit to the Profile database. This agreement is not intended to be either a basis for independent legal rights against the fund member or is any third party intended or permitted to rely upon it as a representation to a third party or upon which a third-party can base any legal rights. NSCC requires similar agreements from its members elsewhere in its Rules and in its membership agreement, such as the agreement required of a fund member in Section 2 of Rule 51 to not submit a transaction through NSCC's Mutual Fund Services in contravention of any applicable regulatory requirements.

2. Statutory Basis

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act, as amended,[5] and the rules and regulations thereunder because the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions by modifying a NSCC service in order to reduce the inherent risks associated with securities certificates. Since NSCC's Profile database is widely used by mutual fund distributors in processing the distribution of mutual fund shares, the proposed rule change should facilitate the prompt and accurate clearance and settlement of securities transactions by assisting in the overall processing efficiency of mutual fund transactions and reducing processing difficulties resulting from incomplete or inaccurate information.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2008–08 in the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSCC–2008–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3:30 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site, *http://www.dtcc.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2008–08 and should be submitted on or before January 20, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–30783 Filed 12–24–08; 8:45 am]

BILLING CODE 8011–01–P

Investment Company Institute, in response to the NASD examination findings in which it was discovered that investors frequently failed to receive appropriate breakpoint discounts in front-end sales load mutual fund transactions. Recommendation (B) of the report stated that NSCC's Profile database should be expanded to include breakpoint aggregation terms and rules for all fund families and should include identification of both link-eligible products (for example, retirement plans, annuities, and insurance products and college savings plans with mutual fund holdings). The Report also noted that for this database to be effective, it must also be comprehensive. Accordingly, mutual funds must fully and accurately populate the database and must update the database on a timely basis.

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59106; File No. SR–NYSE–2008–112]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Discontinue Policy of Prohibiting Transfer Agents from Charging Fees for Issuing Stock Certificates

December 16, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 30, 2008, New York Stock Exchange, LLC (''NYSE'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change No. SR–NYSE–2008–112. The

[1] 15 U.S.C. 78s(b)(1).

Commission is publishing this notice to solicit comments from interested parties on the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the NYSE.[2]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to discontinue its policy of prohibiting transfer agents for listed companies from charging fees for the issuance of stock certificates.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE proposes to discontinue its long-standing, unwritten policy of prohibiting transfer agents of NYSE listed companies from charging for the issuance of stock certificates.

The securities industry is moving towards eliminating the use of physical certificates (*i.e.*, dematerialization) by encouraging investors to hold securities positions in book-entry form either in street name at a broker-dealer or through the Direct Registration System (''DRS''). DRS allows investors to have securities directly registered in book-entry form on the records of the issuer or its transfer agent without having a certificate issued. DRS also allows those securities positions to be electronically transferred to a broker-dealer in order to effect a transaction without the risk and delay associated with the use of paper certificates. Since March 31, 2008, Section 501.00 of NYSE's Listed Company Manual has required that all securities listed on the NYSE must be eligible for participation in DRS.[4] Approximately 2,428 NYSE listed securities currently participate in DRS.

To further the industry's efforts to dematerialize, the Securities Industry and Financial Markets Association (''SIFMA''), which is one of the leaders in the movement towards dematerialization, recently sent a letter to the NYSE requesting that the NYSE discontinue its prohibition of charging fees in connection with the issuance of securities certificates (''SIFMA Letter'').[5] SIFMA noted that almost 75% of physical certificates deposited by broker-dealers and bank custodians at The Depository Trust Company (''DTC''), a registered clearing agency that is the primary custodian of securities traded in the United States, were issued within the last six months. SIFMA believes that these recent deposits indicate that DTC participants (*i.e.*, broker-dealers and banks) are providing physical certificates to their customers only to have the securities moved back into street name in a short period of time. In SIFMA's view, this activity results in unnecessary expense and in inherent risk that the certificates may be lost, destroyed, or stolen. A SIFMA survey concluded that more than 1.2 million certificates need to be replaced because of loss, destruction, or theft each year at an approximate cost to the transfer agents of $65 million.[6]

NYSE believes that securityholders derive no apparent benefit from continuing to hold their securities in certificated form rather than in uncertificated form in street name or through DRS and that the inability of the transfer agents to charge for the issuance of securities certificates imposes a considerable cost on issuers and transfer agents. Therefore, NYSE proposes to discontinue its prohibition of charging fees for the issuance of new certificates. Allowing transfer agents to charge for the issuance of certificates should not only shift the cost of the issuance of certificates from the issuers and transfer agents to the requesting securityholders but should also have the added effect of encouraging more securityholders to hold their securities in street name or through DRS. This should further the movement to dematerialization. NYSE listed companies that want their investors to continue to have access to the free issuance of new certificates will be able to ensure the continuation of this practice by modifying their contractual arrangements with their transfer agents.

NYSE believes that the proposal will help make the securities markets more safe and efficient by encouraging the dematerialization of securities. NYSE also believes that the proposal is consistent with the protection of investors and the public interest because holding a securities position in street name or through DRS provides investors with the ability to hold their securities in a safe and cost-effective manner without incurring the fees associated with the issuance and processing of securities certificates.

2. Statutory Basis

NYSE believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and particularly furthers the objectives of Section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, NYSE believes that the proposal removes impediments to and perfects the mechanism of a free and open market and a national market system in that it encourages the dematerialization of securities, which should improve the process of transferring securities in the public markets. NYSE also believes that the proposal is consistent with the protection of investors and the public interest in that holding securities in or through street name and DRS provides a better alternative to holding securities in certificated form by providing investors with the ability to hold their securities in a safe and cost-effective manner without incurring the fees

[2] The exact text of the NYSE's proposed rule change can be found at *http://www.nyse.com.*

[3] The Commission has modified portions of the text of the summaries prepared by the NYSE.

[4] Section 501.00 requires listed securities to be eligible for a direct registration system operated by a clearing agency, as defined in Section 3(a)(23) of the Act, that is registered with the Commission pursuant to Section 17A(b)(2) of the Act. While currently the DRS administered by The Depository Trust Company is the only direct registration system offered by a registered clearing agency, Section 501.00 provides issuers with the option of using another qualified direct registration system if one should exist in the future. Section 501.00 does not extend to securities which are specifically permitted under that chapter to be and which are book-entry only. NYSE will waive the application of Section 501.00 to any listed company that is a foreign private issuer that submits to NYSE a letter from an independent home country counsel certifying that a home country law or regulation prohibits such compliance.

[5] Letter to Stephen Walsh, Vice President, NYSE Euronext, from Lawrence Morillo, SIFMA Operations Legal & Regulatory Sub-Committee Chair (August 26, 2008).

[6] ''Securities Industry Immobilization & Dematerialization Implementation Guide—The Phase-Out of the Stock Certificate'' (SIFMA, 2008).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

associated with the issuance of certificates.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NYSE has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2008–112 in the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–112. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3:30 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NYSE and on the NYSE's Web site, *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–112 and should be submitted on or before January 20, 2009. For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–30784 Filed 12–24–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59112; File No. SR–NYSE–2008–125]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC That the $8,000,000 Annual Trading Floor Regulatory Fee Allocated Among the Designated Market Maker Firms, Formerly Referred to as the ''Specialist Trading Floor Regulatory Fee,'' Be Reduced by 50% for 2008, and Eliminated Thereafter

December 17, 2008.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 15, 2008, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes that the $8,000,000 annual trading floor regulatory fee allocated among the Designated Market Maker firms (''DMMs'' or ''firms''),[4] formerly referred to as the ''specialist trading floor regulatory fee,'' be reduced by 50% for 2008, and eliminated thereafter.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective retroactively to July 1, 2008, the Exchange proposes that the $8,000,000 annual trading floor regulatory fee allocated among the DMMs be reduced by 50% for 2008 (*i.e.*, $4,000,000), and eliminated thereafter. The purpose of the trading floor regulatory fee has been to defray the costs incurred by the Exchange in connection with the monitoring of trading floor activity by the Exchange's Market Surveillance Division. Effective January 1, 2008, the Exchange reduced this fee from $16,000,000 to $8,000,000.

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 58845 (October 24, 2008) 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46). In this rule filing, which created a new market model for the Exchange, the role of the specialist was altered in certain respects and the term ''specialist'' was replaced with the term ''Designated Market Maker ('DMM').'' Therefore, the annual trading floor regulatory fee previously paid by ''specialist'' firms will be referred to as the ''Designated Market Maker'' annual trading floor regulatory fee.

At that time the Exchange noted that the dramatically increased percentage of NYSE trades automatically executed and the shifts in the specialists' trading role under the Hybrid Market initiative made it appropriate to reduce the direct annual contribution to the regulatory program. After further study this year, and in light of the launching of the New Market Model,[5] which was filed with the Commission for immediate effectiveness [sic] on October 24, 2008, the Exchange has determined that it is appropriate to eliminate this fee entirely. As a result, it is proposed that from July 1, 2008 to the end of 2008, this annual fee be reduced from $8,000,000 to $4,000,000 (the amount already billed at the time this approach was discussed with the members) and that the fee be eliminated hereafter for all members.

Background

In the past, what was formerly referred to as the ''specialists' annual trading floor regulatory fee'' and now referred to as the ''Designated Market Maker annual trading floor regulatory fee,'' was billed to each firm in four quarterly installments. For the reasons stated above, in June 2008 the Exchange decided to reduce the fee from $8,000,000 to $4,000,000 (*i.e.*, the amount that had already been billed to each firm by July 1, 2008), and to completely eliminate the fee in anticipation of the launching of the New Market Model in the fall of 2008.

In or about June and July 2008, the Exchange informed each firm that they should not pay the third or fourth quarter installments of the annual trading floor regulatory fee as such reduced fee of $4,000,000 had been satisfied by the installments in the first two quarters of the year ($2,000,000 × 2 = $4,000,000). By July 1, 2008, each firm had paid the full amount of the reduced regulatory fee. The Exchange instructed the firms to disregard any future bills for this fee, and in the event the firms had already paid the third quarter installment of the fee, the Exchange would give the firms a credit for any payment over $4,000,000. The Exchange applied this reduced annual trading floor regulatory fee of $4,000,000 to all DMM firms (formerly specialist firms). The fee will be eliminated henceforth, and will not appear on the 2009 NYSE Price List.

The elimination of the annual trading floor regulatory fee will not have any impact on the Exchange's ability to maintain its current level of trading floor surveillance or to develop and adopt new surveillance technologies and procedures in the future.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6[6] of the Securities Exchange Act of 1934 (the ''Act'')[7] in general and Section 6(b)(4) of the Act[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2008–125 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–125. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–125 and should be submitted on or before January 20, 2009.

[5] *See* Securities Exchange Act Release No. 58845 (October 24, 2008) 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78a.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–30787 Filed 12–24–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59118; File No. SR–NYSE–2008–129]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the Minimum Price Variation of $0.01 for Orders and Quotations in Bonds Admitted to Dealings on NYSE

December 18, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 16, 2008, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 86 (NYSE Bonds SM) to establish the minimum price variation of $0.01 for orders and quotations in bonds admitted to dealings on NYSE.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to amend Exchange Rule 86 (NYSE Bonds SM) to establish the minimum price variation of $0.01 for orders and quotations in bonds admitted to dealings through the NYSE Bond System.

NYSE Bonds is the Exchange's electronic system for receiving, processing, executing and reporting bids, offers and executions in bonds. Rule 86 (NYSE Bonds SM) prescribes how bonds are traded through the NYSE Bonds trading platform, including the receipt, execution and reporting of bond transactions. Rule 86 was approved by the Commission in March 2007.[3]

Rule 86(f) provides that NYSE Bonds will accept bids and offers in bonds priced to three decimal places. The Exchange proposes to amend Rule 86(f) to provide that NYSE Bonds will accept bids and offers in bonds price to two decimal places.

The Exchange believes this change will place its bond trading on a more competitive basis with how bonds are traded in other systems. Since the implementation of the new trading system for NYSE bonds, the Exchange has sought to increase the liquidity on its bond trading system. The Exchange believes that some of its potential liquidity providers, *e.g.*, retail customers, have been reluctant to place orders representing such liquidity when there is a high possibility that their orders can be ''stepped ahead'' by other orders that ''improve'' the price by a sub-penny. To address this, the Exchange believes that a two decimal minimum price variation will act to level the playing field among its bond customers, and serve to make the Exchange bond market more attractive to a retail customer base.

The Exchange notes that parallel changes are proposed to be made to the rules of the NYSE Alternext Exchange (formerly the American Stock Exchange). These changes are described in SR–NYSEALTR–2008–13.[4]

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'')[5] for this proposed rule change is the requirement under Section 6(b)(5)[6] that an Exchange have rules that are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[7] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer. As outlined above, the Exchange believes that the instant proposal is in keeping with these principles in that it seeks to amend NYSE Rule 86 to place its bond trading system on a more competitive basis with other markets trading bonds.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange represented that the proposed rule change qualifies for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder[9] because it: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55496 (March 20, 2007), 72 FR 14631 (March 28, 2007) (approving SR–NYSE–2006–37).

[4] *See* SR–NYSEALTR 2008–13 (formally submitted on December 16, 2008).

[5] 15 U.S.C. 78a.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k–1(a)(1).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

consistent with the protection of investors and the public interest.[10]

The Exchange has requested that the Commission waive the 30-day operative delay, so that the proposed rule change may become operative upon filing. The Commission hereby grants the Exchange's request and believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[11] As a result of this action, the Exchange will be able to implement without undue delay a proposed rule change that reduces the likelihood of quotations or orders on NYSE Bonds from being stepped ahead of by an insignificant amount. Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2008–129 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–129. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–129 and should be submitted on or before January 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–30789 Filed 12–24–08; 8:45 am]

BILLING CODE 8011–01–P

[10] In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive the five-day pre-filing notice requirement in this case.

[11] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Administrator's Line of Succession Designation, No. 1–A, Revision 29

This document replaces and supersedes ''Line of Succession Designation No. 1–A, Revision 28.''

Line of Succession Designation No. 1–A, Revision 29

Effective immediately, the Administrator's Line of Succession Designation is as follows:

(a) In the event of my inability to perform the functions and duties of my position, or my absence from the office, the Deputy Administrator will assume all functions and duties of the Administrator. In the event the Deputy Administrator and I are both unable to perform the functions and duties of the position or are absent from our offices, I designate the officials in listed order below, if they are eligible to act as Administrator under the provisions of the Federal Vacancies Reform Act of 1998, to serve as Acting Administrator with full authority to perform all acts which the Administrator is authorized to perform:

(1) Chief of Staff
(2) General Counsel
(3) Associate Administrator for Management and Administration
(4) Chief Financial Officer
(5) Regional Administrator for Region 1

(b) Notwithstanding the provisions of SBA Standard Operating Procedure 00 01 2, ''absence from the office,'' as used in reference to myself in paragraph (a) above, means the following:

(1) I am not present in the office and cannot be reasonably contacted by phone or other electronic means, and there is an immediate business necessity for the exercise of my authority; or

(2) I am not present in the office and, upon being contacted by phone or other electronic means, I determine that I cannot exercise my authority effectively without being physically present in the office.

(c) An individual serving in an acting capacity in any of the positions listed in subparagraphs (a) (1) through (5), unless designated as such by the Administrator, is not also included in this Line of Succession. Instead, the next non-acting incumbent in the Line of Succession shall serve as Acting Administrator.

(d) This designation shall remain in full force and effect until revoked or superseded in writing by the Administrator, or by the Deputy Administrator when serving as Acting Administrator.

(e) Serving as Acting Administrator has no effect on the officials listed in subparagraphs (a)(1) through (5), above, with respect to their full-time position's authorities, duties and responsibilities (except that such official cannot both recommend and approve an action).

Dated: December 18, 2008.

Sandy K. Baruah,

Acting Administrator.

[FR Doc. E8–30774 Filed 12–24–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Investment Companies; Increase in Maximum Leverage Ceiling

Correction

In Notice document E8–29027 appearing on page 75488 in the issue of Thursday, December 11, 2008, make the following correction:

The table should appear as follows:

If your leverageable capital is:	Then your maximum leverage is:
(1) Not over $22,800,000	300 percent of Leverageable Capital.
(2) Over $22,800,000 but not over $45,700,000	$68,400,000 + [2 x (Leverageable Capital −$22,800,000)].
(3) Over $45,700,000 but not over $68,600,000	$114,200,000 + (Leverageable Capital −$45,700,000).
(4) Over $68,600,000	$137,100,000.

[FR Doc. Z8–29027 Filed 12–24–08; 8:45 am]
BILLING CODE 1505–01–D

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions to existing OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Reports Clearance Officer to the addresses or fax numbers listed below.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov*.

(SSA), Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1332 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov*.

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. Therefore, your comments would be most helpful if you submit them to SSA within 60 days from the date of this publication. Individuals can obtain copies of these collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the e-mail address listed above.

1. *Application for EXTRA Help with Medicare Prescription Drug Plan Costs—20 CFR 418.3101—0960–0696.* The Medicare Modernization Act of 2003 mandated the creation of the Medicare Part D prescription drug coverage program and provided for certain subsidies for eligible Medicare beneficiaries to help pay for the costs of prescription drugs. SSA uses Form SSA–1020 (and the i1020, its electronic counterpart), the Application for Extra Help with Medicare Prescription Drug Plan Costs, to collect information to make Part D subsidy eligibility determinations.

In compliance with Public Law 110–275, beginning in January 2010, SSA will use a new version of Form SSA–1020. In this new version, SSA will eliminate questions about the value of life insurance policies and in-kind support and maintenance, and we will ask applicants about their interest in applying for the Medicare Savings Program. This information collection request (ICR) is for the new version we will use in 2010. The respondents are Medicare beneficiaries who are applying for the Medicare Part D subsidy.

Form type	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–1020 (paper application form)	560,000	1	30	280,000
i1020 (online application)	240,000	1	40	160,000
Field office interview	200,000	1	30	100,000
Totals	1,000,000			540,000

2. *Medicare Subsidy Quality Review Forms—20 CFR 418(b)(5)—0960–0707.* The Medicare Modernization Act of 2003 mandated the creation of the Medicare Part D prescription drug coverage program and provided for certain subsidies for eligible Medicare beneficiaries to help pay for the costs of prescription drugs. As part of its stewardship duties of the Medicare Part D subsidy program, SSA must conduct periodic quality review checks of the information Medicare beneficiaries report on their subsidy applications (Form SSA–1020). SSA uses the Medicare Quality Review program to conduct these checks.

Beginning in January 2010, SSA will revise the Medicare Quality Review system to comply with Public Law 110–275. Specifically, we will: (1) Eliminate the use of Form SSA–9309, the Life Insurance Verification form; and (2) remove any questions about life insurance policy values and in-kind support and maintenance from the other forms in the collection. This ICR is for the revised Medicare Quality Review System, which we will not use until January 2010. The respondents are applicants for the Medicare Part D subsidy whom we have chosen to undergo a Quality Review.

Form number and name	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–9301 (Medicare Subsidy Quality Review Case Analysis Questionnaire)	5,000	1	30	2,500

Form number and name	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–9302 (Notice of Quality Review Acknowledgement Form for those with Phones)	5,000	1	15	1,250
SSA–9303 (Notice of Quality Review Acknowledgement Form for those without Phones)	500	1	15	125
SSA–9304 (Checklist of Required Information; burden accounted for with forms SSA–9302, SSA–9303, SSA–9311, SSA–9314)	.....	.....	.....	.....
SSA–9308 (Request for Information)	10,000	1	15	2,500
SSA–9310 (Request for Documents)	5,000	1	5	417
SSA–9311 (Notice of Appointment—Denial—Reviewer Will Call)	450	1	15	113
SSA–9312 (Notice of Appointment—Denial—Please Call Reviewer)	50	1	15	13
SSA–8510 (Authorization to the Social Security Administration to Obtain Personal Information)	5,000	1	5	417
SSA–9313 (Notice of Quality Review Acknowledgement Form for those with Phones)	2,500	1	15	625
SSA–9314 (Notice of Quality Review Acknowledgement Form for those without Phones)	500	1	15	125
Totals	34,000	.....	.....	8,085

3. *Redetermination of Eligibility for Help with Medicare Prescription Drug Plan Costs—0960–0723.* As required by the Medicare Modernization Act of 2003 (Pub. L. 108–173), SSA conducts low-income subsidy eligibility redeterminations for Medicare beneficiaries who filed for the subsidy and were determined by SSA to be eligible. SSA will conduct subsidy eligibility redeterminations under two circumstances: (1) When an individual completes Form SSA–1026–OCR–SM–SCE to report a subsidy-changing event (marriage, separation from a spouse, separated spouses resume living together, divorce, annulment, or death); and (2) When SSA uses Form SSA–1026–OCR–SM–REDE to conduct an annual review of individuals who became entitled during the prior 12 months, an annual review of a percentage of individuals who are eligible for more than 12 months, and a review of individuals who report a change in income, resources, or household size that may affect the subsidy amount.

In compliance with Public Law 110–275, SSA will use a new version of Form SSA–1026 beginning in January 2010. In this new version, SSA will eliminate questions about the value of life insurance policies and in-kind support and maintenance. The respondents are current recipients of the Medicare Part D low-income subsidy who will undergo an eligibility redetermination for one of the reasons mentioned above.

Form	Number of respondents	Frequency of response (per year)	Average burden per response (in minutes)	Estimated annual burden (in hours)
SSA–1026–OCR–SM–SCE	249,652	1	20	83,217
SSA–1026–OCR–SM–REDE or SSA–1026–B	11,984	1	20	3,995
Total	261,636	.....	.....	87,212

Dated: December 19, 2008.

John Biles,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. E8–30801 Filed 12–24–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 6471]

Culturally Significant Objects Imported for Exhibition Determinations: ''Inventing Marcel Duchamp: The Dynamics of Portraiture''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Inventing Marcel Duchamp: The Dynamics of Portraiture,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Portrait Gallery, Washington, DC, from on or about March 27, 2009, until on or about August 2, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 16, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–30826 Filed 12–24–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6469]

Culturally Significant Objects Imported for Exhibition Determinations: ''Raoul Dufy: A Celebration of Beauty''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Raoul Dufy: A Celebration of Beauty,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Mississippi Museum of Art, Jackson, MS, from on or about February 7, 2009, until on or about July 5, 2009, at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 17, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–30824 Filed 12–24–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6470]

Culturally Significant Objects Imported for Exhibition Determinations: ''Surrealism and Beyond''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Surrealism and Beyond,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Cincinnati Art Museum, Cincinnati, OH, from on or about February 15, 2009, until on or about May 17, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

December 18, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–30827 Filed 12–24–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6468]

In the Matter of the Review of the Designations of Jaish-e-Mohammed (JEM) and Lashkar-e-Tayyiba (LT), and All Designated Aliases, as Foreign Terrorist Organizations Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Records assembled in this matter pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the 2003 re-designations of the aforementioned organizations as foreign terrorist organizations have not changed in such a manner as to warrant revocation of the designations and that the national security of the United States does not warrant a revocation.

Therefore, I hereby determine that the designations of the aforementioned organizations as foreign terrorist organizations, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: December 15, 2008.

John D. Negroponte,

Deputy Secretary of State, Department of State.

[FR Doc. E8–30828 Filed 12–24–08; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Office of Commercial Space Transportation; Notice of Approval on a Record of Decision (ROD) for the Spaceport America Commercial Launch Site, Sierra County, NM

AGENCY: The Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice of Approval of Record of Decision.

SUMMARY: In accordance with National Environmental Policy Act (NEPA) regulations and FAA Order 1050.1E, Change 1, the FAA is announcing the availability of the ROD for the Spaceport America Commercial Launch Site, Sierra County, New Mexico. The ROD provides the FAA's final environmental determination and approval to support

the issuance of a Launch Site Operator License to the New Mexico Spaceport Authority (NMSA) to operate Spaceport America, as proposed in the Final Environmental Impact Statement (EIS) published in November 2008.

The ROD provides a description of the applicant's Proposed Action and reasonable alternatives, and identifies the FAA's preferred and the environmentally preferred alternative. It includes a discussion of environmental impacts associated with the Proposed Action in each resource area, as analyzed in the Final EIS. The ROD summarizes the mitigation and enforcement actions that would be made the subject of the terms and conditions of the Launch Site Operator License issued to NMSA, as well as other conservation and enhancement measures described in the Final EIS and presented for consideration.

The Final EIS, prepared by the FAA for the Spaceport America Commercial Launch Site, serves as the primary reference and basis for preparation of the ROD. The Final EIS documents the analysis of environmental consequences associated with the construction and operation of Spaceport America and reasonable alternatives to the Proposed Action. The FAA is the lead Federal agency responsible for the preparation of the EIS and ROD for the proposed Spaceport America. Cooperating agencies include the Bureau of Land Management, the National Park Service, the U.S. Army's White Sands Missile Range (WSMR), and the National Aeronautics and Space Administration. The EIS and ROD were prepared pursuant to the requirements of the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500–1508), and FAA Order 1050.1E, Change 1, *Environmental Impacts: Policies and Procedures.*

The FAA has posted the ROD on the FAA Web site at *http://ast.faa.gov.* In addition, paper copies of the ROD will be sent out with the signed Programmatic Agreement to persons and agencies on the distribution list (found in Chapter 8 of the Final EIS). The Programmatic Agreement addresses significant impacts to Historical, Architectural, Archaeological, and Cultural Resources from the Proposed Action.

Additional Information: Under the Proposed Action, and the alternative selected by the FAA for implementation, the FAA would issue a Launch Site Operator License to NMSA that would allow the State to operate the proposed Spaceport America Commercial Launch Site. The EIS analyzed launching both horizontal and vertical launch vehicle (LV) launches. Horizontal LVs would launch and land at the proposed Spaceport America airfield. Vertical LVs would launch from Spaceport America and either land at Spaceport America or at WSMR. Rocket-powered vertical landing vehicles would land on either the Spaceport America airfield or a vertical launch/landing pad.

In addition, the Proposed Action includes construction of facilities needed to support the licensed launch activities at the proposed launch site. Development of Spaceport America infrastructure would occur in two phases. The total area of land disturbed by construction would be approximately 970 acres; the total area of the final facilities footprint would be approximately 145 acres. The proposed Spaceport America boundary would encompass approximately 26 square miles. This area currently contains both State and private land.

Operational activities in support of the Proposed Action would begin as soon as the phased construction activities related to the Proposed Action were completed. The operational activities that may have environmental consequences and would support, either directly or indirectly, licensed launches include:

- Transport of Launch Vehicles to the Assembly or Staging Areas
- Transport and Storage of Rocket Propellants and Other Fuels
- Launch, Landing and Recovery Activities for Horizontal Vehicles
- Launch, Landing and Recovery Activities for Vertical Vehicles
- Other Activities

—Ground-Based Tests and Static Firings

—Training

—X Prize Cup Events

The FAA identified two alternatives and the No Action Alternative to the Proposed Action, which are considered in the Final EIS. Under Alternative 1, FAA would consider issuing a Launch Site Operator License only for the operation of a launch site to support horizontal launches. This is considered a feasible alternative because a significant number of launches of horizontal LVs are projected, and most X Prize Cup activities would be located at the airfield.

Under Alternative 2, FAA would consider issuing a Launch Site Operator License only for the operation of a launch site to support vertical launches. This is considered a feasible alternative because a significant number of launches are projected to be of vertical LVs.

Under the No Action Alternative, the FAA would not issue a Launch Site Operator License to the NMSA. Subsequently, the need to support commercial launches and host the X Prize Cup would not be met by the State of New Mexico.

Resource areas were considered to provide a context for understanding and assessing the potential environmental effects of the Proposed Action, with attention focused on key issues. The resource areas considered included compatible land use; Section 4(f) lands and farmlands; noise; visual resources and light emissions; historical, architectural, archaeological, and cultural resources; air quality; water quality, wetlands, wild and scenic rivers, coastal resources, and floodplains; fish, wildlife, and plants; hazardous materials, pollution prevention, and solid waste; socioeconomics, environmental justice, and children's environmental health and safety risks; and energy supply and natural resources. Construction impacts and secondary (induced) impacts are also considered. Additional analyses considered in the appendices include geology and soils; mineral resources; air space; health and safety; and transportation.

As stated in the ROD and supported by the Final EIS, Alternatives 1 and 2 and the No Action Alternative would result in restrictive licensing that would impede the FAA's ability to assist the commercial space transportation industry in meeting projected demand for services and expansion into new markets. The Preferred Alternative, the applicant's Proposed Action, would allow the greatest development and growth of the U.S. commercial space launch industry. In addition, although implementation of the Preferred Alternative would result in slightly greater environmental impacts than the overall impacts associated with the alternatives including the No Action Alternative, the impacts are still expected to be less than significant, in all but one resource area. Therefore, the FAA has selected the Preferred Alternative.

FOR FURTHER INFORMATION CONTACT: Stacey M. Zee (AST–100), Office of Commercial Space Transportation, 800 Independence Avenue SW., Room 331, Washington, DC 20591, telephone (202) 267–9305; E-mail *stacey.zee@faa.gov.*

Issued in Washington, DC on December 18, 2008.

Michael McElligott,

Manager, Space Systems Development Division.

[FR Doc. E8–30845 Filed 12–24–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Availability; Washington, DC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Availability.

SUMMARY: The FHWA is issuing this notice to advise the public of the availability of the Final Section 4(f) Evaluation for the proposed roadway improvements proposed in conjunction with the consolidation of the Department of Homeland Security Headquarters at St. Elizabeths in Southeast Washington, DC in accordance with 49 U.S.C. 303.

FOR FURTHER INFORMATION CONTACT: Jack Van Dop, Senior Technical Specialist, Federal Highway Administration, 21400 Ridgetop Circle, Sterling, VA 20166, Telephone 703–404–6282 or *jack.j.vandop@fhwa.dot.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access to this Notice

An electronic copy of this document (notice) may be downloaded by using a computer, modem and suitable communications software from Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's Web site at: *http://www.access.gpo.gov/nara*.

Background

The FHWA has cooperated with the General Services Administration (GSA) in the preparation of a Final Environmental Impact Statement (EIS) for the consolidation of the Department of Homeland Security Headquarters at St. Elizabeths, Southeast Washington, DC. The EIS was prepared by the General Services Administration, National Capital Region. The Draft EIS contained a Draft Section 4(f) Evaluation and was released in late 2007. This Final Section 4(f) Evaluation presents an assessment of the permanent and temporary impacts to the National Park Service (NPS) land known as Shepherd Parkway and the GSA property of the St. Elizabeths West Campus, resulting from improvements to the Malcolm X Avenue/I–295 interchange and construction of a related access road between Firth Sterling Avenue and Malcolm X Avenue. Transportation improvements are needed to support the redevelopment of the St. Elizabeths West Campus and construction and operation of the DHS Headquarters. The Final Section 4(f) Evaluation also provides a description of the Section 4(f) resources that would be affected, consideration of total Section 4(f) resources avoidance alternatives, and identification of potential measures to minimize harm to the 4(f) resources.

Availability

The Section 4(f) Evaluation is available for review until January 23, 2009. A copy of the Section 4(f) Evaluation for which this notice is being made, is posted at *http://www.efl.fhwa.gov/projects-environment.aspx* and *http://www.stelizabethswestcampus.com*. Hard copies of this evaluation can be viewed at the following locations:

Anacostia Neighborhood Library, 1800 Good Hope Road, SE., at 18th Street, SE., Washington, DC 20020.

Francis A. Gregory, 3660 Alabama Avenue, SE., at 37th Street, SE., Washington, DC 20020.

Parkland-Turner Community Library, 1700 Alabama Avenue, SE., at Stanton Road, SE.,Washington, DC 20020.

ANC 8C, 3125 MLK Jr., Avenue, SE., Washington, DC 20020.

Washington Highlands, Neighborhood Library, 115 Atlantic Street, SW., at South Capitol Street, SW., Washington, DC 20032.

UPO Ralph Waldo 'Petey Greene', Community Service Center, 2907 Martin Luther King, Jr., Ave., SE., Washington, DC 20032.

National Capitol Planning Commission, 401 9th Street, NW., North Lobby, Suite 500, Washington, DC 20004.

Federal Highway Administration, 21400 Ridgetop Circle, Sterling, VA 20166.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Dated: December 19, 2008.

Karen A. Schmidt,

Director, Program Administration.

[FR Doc. E8–30773 Filed 12–24–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Environmental Impact Statement for the California High Speed Train Project from San Francisco to San Jose, CA

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Intent to Prepare an Environmental Impact Statement

SUMMARY: This notice is to advise the public that FRA and the California High Speed Rail Authority (Authority) will jointly prepare a project Environmental Impact Statement (EIS) and project Environmental Impact Report (EIR) for the San Francisco to San Jose section of the Authority's proposed California High-Speed Train (HST) System in compliance with relevant state and federal laws, in particular the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).

In 2001, the Authority and FRA started a tiered environmental review process for the HST system and in 2005, completed the first tier California High Speed Train Program EIR/EIS and approved the statewide HST system for intercity travel in California between the major metropolitan centers of Sacramento and the San Francisco Bay Area in the north, through the Central Valley, to Los Angeles and San Diego in the south. The approved HST system would be about 800-miles long, with electric propulsion and steel-wheel-on-steel-rail trains capable of maximum operating speeds of 220 miles per hour (mph) on a mostly dedicated system of fully grade-separated, access-controlled steel tracks and with state-of-the-art safety, signaling, communication, and automated train control systems. In 2008, the Authority and FRA completed a second program EIR/EIS to evaluate alignments and station locations within the broad corridor between and including the Altamont Pass and the Pacheco Pass to connect the Bay Area and Central Valley portions of the HST system. The Authority and FRA selected the Pacheco Pass—San Francisco and San Jose termini network alternative, as well as preferred corridor alignments and station location options. The selected alignment uses the Caltrain rail right-of-way, between San Francisco and San Jose along the San Francisco Peninsula, and the Pacheco Pass via Henry Miller Road, between San Jose and the Central Valley.

The preparation of the San Francisco to San Jose HST Project EIR/EIS will

involve development of preliminary engineering designs and assessment of environmental effects associated with the construction, operation, and maintenance of the HST system, including track, ancillary facilities and stations, along the Caltrain corridor from San Francisco to San Jose.

DATES: Written comments on the scope of the San Francisco to San Jose HST Project EIR/EIS should be provided to the Authority by March 6, 2009. Public scoping meetings are scheduled from January 22, 2009 to January 29, 2009, as noted below in San Mateo, San Francisco, and Santa Clara Counties.

ADDRESSES: Written comments on the scope should be sent to Mr. Dan Leavitt, Deputy Directory, ATTN: San Francisco to San Jose, California High-Speed Rail Authority, 925 L Street, Suite 1425, Sacramento, CA 95814, or via e-mail with subject line ''San Francisco to San Jose HST'' to: *comments@hsr.ca.gov.* Comments may also be provided orally or in writing at the scoping meetings scheduled at the following locations:

- Sam Trans Auditorium, 1250 San Carlos Avenue, San Carlos, California, January 22, 2009 from 3 p.m. to 8 p.m.
- San Francisco State University, 835 Market Street, 6th Floor (Rooms 673–674), San Francisco, California, January 27, 2009 from 3 p.m. to 8 p.m.
- Santa Clara Convention Center, 5001 Great American Parkway, Great American Meeting Rooms 1 & 2, Santa Clara, California, January 29, 2009 from 3 p.m. to 8 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. David Valenstein, Environmental Program Manager, Office of Railroad Development, Federal Railroad Administration, 1200 New Jersey Avenue, SE. (Mail Stop 20), Washington, DC 20590; Telephone: (202) 493–6368, or Mr. Dan Leavitt, Telephone: (916) 324–1541 at the above noted address.

SUPPLEMENTARY INFORMATION: The Authority was established in 1996 and is authorized and directed by statute to undertake the planning and development of a proposed statewide HST network that is fully coordinated with other public transportation services. The Authority adopted a Final Business Plan in June 2000, which reviewed the economic feasibility of a 800-mile-long HST capable of speeds in excess of 200 miles per hour on a dedicated, fully grade-separated state-of-the-art track. The Authority released an updated Business Plan in November 2008.

The FRA has responsibility for oversight of the safety of railroad operations, including the safety of any proposed high-speed ground transportation system. For the proposed HST, it is anticipated that FRA would need to take certain regulatory actions prior to operation.

In 2005, the Authority and FRA completed a Final Program EIR/EIS for the Proposed California High Speed Train System (Statewide Program EIR/EIS), as the first phase of a tiered environmental review process. The Authority certified the Final Program EIR under CEQA and approved the proposed HST System, and FRA issued a Record of Decision under NEPA on the Final Program EIS. This statewide program EIR/EIS established the purpose and need for the HST system, analyzed an HST system, and compared it with a No Project/No Action Alternative and a Modal Alternative. In approving the statewide program EIR/EIS, the Authority and FRA selected the HST Alternative, selected certain corridors/general alignments and general station locations for further study, incorporated mitigation strategies and design practices, and specified further measures to guide the development of the HST system at the site-specific project level of environmental review to avoid and minimize potential adverse environmental impacts. In the subsequent Bay Area to Central Valley HST Final Program EIR/EIS, the Authority and FRA selected the Caltrain right-of-way between San Francisco and San Jose as the preferred alternative to connect with the San Jose to Central Valley section.

The San Francisco to San Jose HST Project EIR/EIS will tier from the Final Statewide Program EIR/EIS and the Final Bay Area to Central Valley HST Program EIR/EIS in accordance with Council on Environmental Quality (CEQ) regulations, (40 CFR 1508.28) and State CEQA Guidelines (14 C.C.R. § 15168[b]). Tiering will ensure that the San Francisco to San Jose HST Project EIR/EIS builds upon all previous work prepared for and incorporated in the Statewide Program EIR/EIS and the Bay Area to Central Valley HST Program EIR/EIS.

This Project EIR/EIS will describe site-specific environmental impacts, will identify specific mitigation measures to address those impacts and will incorporate design practices to avoid and minimize potential adverse environmental impacts. The FRA and the Authority will assess the site characteristics, size, nature, and timing of proposed site-specific projects to determine whether the impacts are potentially significant and whether impacts can be avoided or mitigated. This project EIR/EIS will identify and evaluate reasonable and feasible site-specific alignment alternatives, and evaluate the impacts from construction, operation, and maintenance of the HST system. Information and documents regarding this HST environmental review process will be made available through the Authority's Internet site: *http://www.cahighspeedrail.gov/.*

Purpose and Need: The purpose of the proposed HST system is to provide a new mode of high-speed intercity travel that would link major metropolitan areas of the state; interface with international airports, mass transit, and highways; and provide added capacity to meet increases in intercity travel demand in California in a manner sensitive to and protective of California's unique natural resources. The need for a high-speed train (HST) system is directly related to the expected growth in population, and increases in intercity travel demand in California over the next twenty years and beyond. With the growth in travel demand, there will be an increase in travel delays arising from the growing congestion on California's highways and at airports. In addition, there will be negative effects on the economy, quality of life, and air quality in and around California's metropolitan areas from a transportation system that will become less reliable as travel demand increases. The intercity highway system, commercial airports, and conventional passenger rail serving the intercity travel market are currently operating at or near capacity, and will require large public investments for maintenance and expansion to meet existing demand and future growth.

Alternatives: The San Francisco to San Jose HST Project EIR/EIS will consider a No Action or No Project Alternative and an HST Alternative for the San Francisco to San Jose corridor.

No Action Alternative: The No Action Alternative (No Project or No Build) represents the conditions in the corridor as it existed in 2007, and as it would exist based on programmed and funded improvements to the intercity transportation system and other reasonably foreseeable projects through 2035, taking into account the following sources of information: State Transportation Improvement Program (STIP), Regional Transportation Plans (RTPs) for all modes of travel, airport plans, intercity passenger rail plans, city and county plans.

HST Alternative: The Authority proposes to construct, operate and maintain an electric-powered steel-wheel-on-steel-rail HST system, about 800 miles long, capable of operating

speeds of 220 mph on mostly dedicated, fully graded-separated tracks, with state-of-the-art safety, signaling, and automated train control systems. The San Francisco to San Jose HST corridor selected by the Authority and FRA follows the Caltrain right-of-way from San Francisco to San Jose. The HST would operate in this area at speeds below 150 mph and would share tracks with Caltrain express commuter trains. Further engineering studies to be undertaken as part of this EIR/EIS process will examine and refine alignments in the Caltrain right-of-way. The entire alignment would be grade separated. The options to be considered for the design of grade separated roadway crossings would include (1) Depressing the street to pass under the rail line; (2) elevating the street to pass over the rail line; and (3) leaving the street as-is and constructing rail line improvements to pass over or under the local street. In addition, alternative sites for right-of-way maintenance, train storage facilities and a train service and inspection facility will be evaluated in the San Francisco to San Jose HST project area.

The preferred station in the City of San Francisco is the Transbay Transit Center; in the City of Millbrae the existing Millbrae BART/Caltrain Station, and in the City of San Jose the Intermodal Diridon Station. These locations were selected by the Authority and FRA through the Bay Area to Central Valley HST Final Program EIR/EIS considering the project purpose and need, and the program objectives. Potential station locations in the City of Redwood City at the existing Caltrain Station near downtown or in the City of Palo Alto at the existing Caltrain Station near downtown will also be evaluated in this project EIR/EIS. Alternative station sites at or near the selected station locations may be identified and evaluated in this Project EIR/EIS.

Probable Effects: The purpose of the EIR/EIS process is to explore in a public setting the effects of the proposed project on the physical, human, and natural environment. The FRA and the Authority will continue the tiered evaluation of all significant environmental, social, and economic impacts of the construction and operation of the HST system. Impact areas to be addressed include transportation impacts; safety and security; land use and zoning; land acquisition, displacements, and relocations; cumulative and secondary impacts; cultural resource impacts, including impacts on historical and archaeological resources and parklands/recreation areas; neighborhood compatibility and environmental justice; natural resource impacts including air quality, wetlands, water resources, noise, vibration, energy, wildlife and ecosystems, including engendered species. Measures to avoid, minimize, and mitigate adverse impacts will be identified and evaluated.

The San Francisco to San Jose HST Project EIR/EIS will be prepared in accordance with FRA's Procedures for Considering Environmental Impacts (64 FR 28545 [May 26, 1999]) and will address not only NEPA and CEQA but will also address as necessary other applicable statutes, regulations, and executive orders, including the Clean Air Act, Section 404 of the Clean Water Act, Section 106 of the National Historic Preservation Act of 1966, Section 4(f) of the Department of Transportation Act, the Endangered Species Act, and Executive Order 12898 on Environmental Justice.

This EIR/EIS process will also continue the NEPA/Clean Water Act Section 404 integration process established through the Statewide Program EIR/EIS process. The EIR/EIS will evaluate project alignment alternatives, station and maintenance facility locations to support a determination of the Least Environmentally Damaging Practicable Alternative (''LEDPA'') by the U.S. Army Corps of Engineers.

Scoping and Comments: FRA encourages broad participation in the EIS process during scoping and review of the resulting environmental documents. Comments are invited from all interested agencies and the public to ensure the full range of issues related to the proposed action and reasonable alternatives are addressed and all significant issues are identified. In particular, FRA is interested in determining whether there are areas of environmental concern where there might be a potential for significant site-specific impacts. Public agencies with jurisdiction are requested to advise FRA and the Authority of the applicable permit and environmental review requirements of each agency, and the scope and content of the environmental information that is germane to the agency's statutory responsibilities in connection with the proposed project. Public agencies are requested to advise FRA if they anticipate taking a major action in connection with the proposed project and if they wish to cooperate in the preparation of the Project EIR/EIS. Public scoping meetings have been scheduled as an important component of the scoping process for both the State and Federal environmental review. The scoping meetings described in this Notice will also be the subject of additional public notification.

FRA is seeking participation and input of all interested federal, state, and local agencies, Native American groups, and other concerned private organizations or individuals on the scope of the EIR/EIS. Implementation of the San Francisco to San Jose section of the HST system is a federal undertaking with the potential to affect historic properties. As such, it is subject to the requirements of section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f.). In accordance with regulations issued by the Advisory Council on Historic Preservation, 36 CFR part 800, FRA intends to coordinate compliance with section 106 of this Act with the preparation of the EIR/EIS, beginning with the identification of consulting parties through the scoping process, in a manner consistent with the standards set out in 36 CFR 800.8.

Issued in Washington, DC on December 18, 2008.

Mark E. Yachmetz,

Associate Administrator for Railroad Development.

[FR Doc. E8–30751 Filed 12–24–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 18, 2008.

The Department of Treasury is planning to submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11020, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 27, 2009 to be assured of consideration.

Office of Procurement

OMB Number: 1505–0107.

Type of Review: Extension.

Title: Regulation Agency Protests.

Description: The information being collected is obtained from contractors as part of their submissions whenever they file a bid protest with the Department or any of its Bureaus. The information is used by Treasury officials in deciding

how the protest should be resolved. Failure to collect this information would result in a non-uniform or unclear submission and delayed resolution of agency protests.

Respondents: Businesses and other for-profit institutions.

Estimated Total Reporting Burden: 46 hours.

OMB Number: 1505–0080.

Type of Review: Extension.

Title: Post-Contract Award Information.

Description: Information requested of contractors is specific to each contract and is required for Treasury to properly evaluate the progress made and/or management controls used by contractors providing supplies or services to the Government, and to determine contractors' compliance with the contracts, in order to protect the Government's interest.

Respondents: Businesses and other for-profit institutions.

Estimated Total Reporting Burden: 47,796 hours.

OMB Number: 1505–0081.

Type of Review: Extension.

Title: Solicitation of Proposal Information for Award of Public Contracts.

Description: Information requested of offerors is specific to each procurement solicitation, and is required for Treasury to properly evaluate the capabilities and experience of potential contractors who desire to provide the supplies or services to be acquired. Evaluation will be used to determine which proposal most benefits the Government.

Respondents: Businesses and other for-profit institutions.

Estimated Total Reporting Burden: 410,988 hours.

Clearance Officer: Jean Carter, Treasury Office of Procurement, 1500 Pennsylvania Avenue, Washington, DC 20220, (202) 622–6760.

OMB Reviewer: Nick Fraser (202) 395–5887, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E8–30739 Filed 12–24–08; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 18, 2008.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the publication date of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before January 28, 2009 to be assured of consideration.

Bureau of Public Debt (BPD)

OMB Number: 1535–0091.

Type of Review: Extension.

Title: Regulations Governing U.S. Treasury Securities—State and Local Government Series.

Forms: PD F 1849.

Description: This collection is required by regulations governing U.S. Treasury Securities—State and Local Government Series.

Respondents: State, local, or tribal governments.

Estimated Total Burden Hours: 542 hours.

Clearance Officer: Brian Lallemont (304) 480–8150, Bureau of the Public Debt, 200 Third Street, Parkersburg, West Virginia 26106.

OMB Reviewer: Nick Fraser (202) 395–5887, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E8–30740 Filed 12–24–08; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 19, 2008.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before January 28, 2009 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1417.

Type of Review: Extension.

Title: Indian Employment Credit.

Description: Employers can claim a credit for hiring American Indians or their spouses to work within an Indian reservation. The credit is figured by multiplying by 20% the increase in wages and health insurance costs over the comparable amount paid or incurred during calendar year 1993.

Respondents: Individuals or households.

Estimated Total Burden Hours: 4,332 hours.

Clearance Officer: Glenn P. Kirkland (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Nicholas A. Fraser (202) 395–5887, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E8–30741 Filed 12–24–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on January 12, 2009, in the Carlton Room, at the St. Regis Washington, DC, 923 16th and K Streets, NW., from 8:30 a.m. to 5:30 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on establishing and supervising a schedule to conduct periodic reviews of the VA Schedule for Rating Disabilities.

The Committee will receive briefings about studies on compensation for veterans with service-connected disabilities and other veteran benefits programs. An open forum for verbal statements from the public will be available in the afternoon. People wishing to make verbal statements before the Committee will be accommodated on a first-come, first-served basis and will be provided three minutes per statement.

Interested persons may submit written statements to the Committee before the meeting, or within 10 days after the meeting, by sending them to Ms. Ersie Farber, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (211A), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting should contact Ms. Farber at (202) 461–9728.

Dated: December 19, 2008.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E8–30796 Filed 12–24–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,

December 29, 2008

Part II

Department of Housing and Urban Development

Notice of HUD's Fiscal Year (FY) 2009 Notice of Funding Availability (NOFA); Policy Requirements and General Section to HUD's FY2009 NOFAs for Discretionary Programs; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5300–N–01]

Notice of HUD's Fiscal Year (FY) 2009 Notice of Funding Availability (NOFA); Policy Requirements and General Section to HUD's FY2009 NOFAs for Discretionary Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of HUD's FY2009 NOFA Policy Requirements and General Section to HUD's FY2009 NOFAs for Discretionary Programs (notice).

SUMMARY: This notice provides prospective applicants for HUD's competitive funding with the opportunity to become familiar with the General Section of HUD's FY2009 NOFAs, in advance of publication of any FY2009 NOFAs. This year, HUD plans to publish its NOFAs as they are approved for publication and not in a combined SuperNOFA. HUD believes that by making this change, the NOFAs will be available earlier in the fiscal year. To assist applicants in this transformation, HUD is publishing the anticipated schedule for release of HUD's FY2009 NOFAs in Appendix A. The information regarding NOFA programs and schedules is subject to the availability of appropriations. As HUD receives appropriations, HUD may elect to amend the anticipated dates, estimated funds available, and/or program requirements that may appear in the published NOFAs to reflect HUD's FY2009 appropriations act, when enacted by Congress. Any amendment to HUD published NOFAs will be made available to the public through a **Federal Register** publication and published on *http://www.grants.gov.* Applicants are urged to sign up for Grants.gov's RSS Feed service to receive any changes to this General Section to HUD's FY2009 NOFAs. Information about the RSS Feed Service can be found at *http://www07.grants.gov/help/rss.jsp.* Detailed instructions on use of the RSS Feed can be found later in this General Section.

Applicants are advised to become familiar with the requirements of this General Section, particularly with applicant Grants.gov registration requirements and submission instructions. Submission instructions must be adhered to in order to have a successful submission. Applicants are also advised to provide copies of the General Section to all persons that will be working on the application. HUD has found too often that the Program Section and the application are passed along, but not the General Section instructions; thus placing Authorized Organization Representatives (AORs) at a disadvantage in not having all the information needed for submission.

HUD will continue to require that applicants submit their applications electronically via Grants.gov. In FY2008, HUD switched to Adobe Forms application packages, available on Grants.gov. The Adobe Forms packages take more processing power, are larger in size, and use more memory than the earlier packages used by Grants.gov. Applicants are advised to pay careful attention to the submission instructions contained in this notice. Failure to do so will result in difficulty in uploading your application and ''VirusDetect'' rejection notices. The Adobe Forms packages are compatible with Windows XP Windows and Windows Vista operating systems, Apple Macintosh computers, and Microsoft Office 2007. Please carefully read the instructions in this notice regarding use of Adobe Forms.

To submit an application via Grants.gov, new users will be required to complete a five-step registration process, which can take 2 to 4 weeks to complete. The process includes ensuring that information provided for the applicant organization to Dun and Bradstreet (D&B) for your DUNS number matches information previously provided by your organization and contained in Internal Revenue Service (IRS) records. If there is a discrepancy in the information, the registration cannot be completed until discrepancy issues are resolved. Applicants that have previously completed the registration process have to renew or update their registration in the Central Contractor Registration (CCR). The renewal/update process confirms that the registration information is still accurate and allows organizations to make any appropriate changes. During the renewal/update process, the CCR will check the D&B information against the IRS records for the applicant organization. If there are discrepancies, the renewal/update cannot be completed until the discrepancies are resolved. Please allow adequate time to resolve any registration issues. Failure to complete the renewal/update process in the CCR before the CCR registration expires will result in an applicant having to repeat the five steps of the registration process. If an applicant changes the eBusiness Point of Contact in the CCR registration, it should make sure the new eBusiness Point of Contact has also granted permission to the person submitting the application to be the AOR. To submit an eligible application to HUD, the AOR must be able to enter into a legally binding agreement on behalf of the organizational entity. Please see detailed registration instructions in Section IV.B. of this notice.

HUD recommends that all prospective applicants take the time to carefully read the notice entitled ''Notice of Opportunity to Register Early and other Important Information for Electronic Application Submission via Grants.gov,'' published on December 5, 2008 (73 FR 74179). This notice is also available on HUD's Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm* and on *http://www.Grants.gov.* HUD's Early Registration notice provides step-by-step instructions for applicants who must register with Grants.gov and also provides renewal/update instructions for those who have previously registered. Prospective applicants should register or update their registration information upon publication of this notice so you are prepared when the Program Section NOFAs are published. Please note that the Continuum of Care application is submitted through the HUD eSNAPS system, not Grants.gov. Submission instructions for the eSNAPs applications will be contained in the NOFA for the Continuum of Care program. Notification of the availability of the Continuum of Care NOFA and FY2009 application, and other information, will be released via the Grants.gov Web site. HUD does not maintain a mailing list with the exception of the Continuum of Care listserv for the Continuum of Care applicant community. To join the HUD homeless assistance program listserv, go to *http://www.hud.gov/subscribe/signup.cfm?listname=Homeless%20Assistance%20Program&list=HOMELESS-ASST-L.*

FOR FURTHER INFORMATION CONTACT: For further information on HUD's FY2009 Policy Requirements and General Section, contact the Office of Departmental Grants Management and Oversight, Office of Administration, Department of Housing and Urban Development, 451 7th Street, SW., Room 3156, Washington, DC 20410–5000; telephone number 202–708–0667. This is not a toll-free number. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Each year, HUD strives to improve its competitive funding process. To help applicants with electronic application registration

and submission, HUD is updating its Desktop User Guide for Submitting Electronic Grant Applications. The user guide will provide step-by-step details and screen shots of the entire registration and application submission process, including troubleshooting application submission errors. HUD updates the guide regularly and it will be available at *http://www.hud.gov/offices/adm/grants.*

HUD believes that early publication of the General Section is beneficial to prospective applicants by providing advance notice of the Department's threshold requirements, strategic goals, policy priorities, and other requirements applicable to almost every individual NOFA published by the Department. The General Section is structured to refer the reader to the individual program NOFAs. Although program NOFAs are not being published at this time, the references are retained. Likewise, when program NOFAs are published they will contain references to the General Section. The General Section and Program Sections comprise the NOFA instructions. Forms and narratives are used by the applicants to address the requirements contained in the instructions. When the Program Sections of the FY2009 NOFAs are published, they will be consistent with the General Section.

HUD is always interested in improving its application processes. You can help HUD improve its outreach and program NOFAs by providing feedback on ways it can improve the NOFA process. Please note that each application contains a ''You Are Our Client!'' questionnaire. HUD requests that you respond to this survey to let the Department know what improvements have been beneficial and to share your ideas on where improvements can continue to be made. HUD carefully considers the comments received from its clients and strives to use the comments to improve each year's NOFAs and the funding process.

This publication includes a list of programs for which NOFAs are anticipated to be published in FY2009, subject to the availability of funds. Any changes to the listing will be identified in each published program NOFA. Any changes to this General Section will be published as Technical Corrections in the **Federal Register** and on *http://www.Grants.gov.*

HUD hopes that the information contained in this General Section, and in other publications designed to assist applicants requesting funds via electronic application, is helpful to you, our applicants.

Dated: December 17, 2008.

Roy A. Bernardi,

Deputy Secretary.

Overview Information

A. *Federal Agency Name:* Department of Housing and Urban Development (HUD), Office of the Secretary.

B. *Funding Opportunity Title:* Policy requirements applicable to all HUD Notices of Funding Availability (NOFAs) published during FY2009.

C. *Announcement Type:* Initial announcement of the general policy requirements that apply to all HUD federal financial assistance NOFAs for FY2009.

D. *Funding Opportunity Number:* FR–5300–N–01.

E. *Catalog of Federal Domestic Assistance (CFDA) Number:* A CFDA number is provided for each HUD federal financial assistance program. When using ''Apply Step 1'' on the Grants.gov Web site to download an application, you will be asked for the CFDA number. Please refer to the CFDA number in the Grants.gov synopsis of the programs for which you wish to apply. The CFDA number is a key data element used for the application search feature of Grants.gov. Use only the CFDA number, the Funding Competition Identification Number, or the Funding Opportunity Number, when searching Grants.gov. Using more than one of these items will result in an error message indicating that the opportunity cannot be found.

F. *Dates:* The deadline dates that apply to the federal financial assistance made available through HUD's FY2009 NOFAs will be found in the published NOFAs. Appendix A to this General Section lists the programs expected to be included in HUD's FY2009 NOFAs, and their anticipated publication time frame.

G. *Additional Overview Content Information:* Unless otherwise stated, HUD's general policy requirements set forth in this notice apply to all HUD federal financial assistance made available through HUD's FY2009 NOFAs. These policies cover all NOFAs issued for FY2009 funding.

Full Text of Announcement

I. Funding Opportunity Description

This notice describes HUD's FY2009 policy requirements applicable to all of HUD's NOFAs published in FY2009. Each published NOFA will contain a description of the specific requirements for the program for which funding is made available and each will refer to applicable policies described in this General Section. Each program NOFA will also describe additional procedures and requirements that apply to the individual program NOFA, including a description of the eligible applicants, eligible activities, threshold requirements, factors for award, variations from the General Section requirements, and any additional program requirements or limitations. To adequately address all of the application requirements for any program for which you intend to apply, please carefully read and respond to both this General Section and the individual program NOFAs.

Authority. HUD's authority for making funding available under its FY2009 programs is identified in each program NOFA.

II. Award Information

Funding Available. Each program NOFA will identify the estimated amount of funds available in FY2009 based on anticipated or available appropriations, plus any funds from previous years available for award in FY2009. Appendix A to this General Section lists the programs HUD expects to issue NOFAs for in FY2009.

Additional program NOFAs may be published during FY2009. Any additional funding opportunities will be made available on *http://www.Grants.gov* and the **Federal Register**.

III. Eligibility Information

A. *Eligible Applicants.* The individual program NOFAs describe the eligible applicants and eligible activities for each program. Applicants should be aware that HUD does not directly fund individuals through its competitive NOFA process.

B. *Cost Sharing or Matching.* The program NOFAs describe the applicable cost sharing, matching requirements, or leveraging requirements related to each program, if any. Although matching or cost sharing may not be required, HUD programs often encourage applicants to leverage grant funds with other funding to receive higher rating points.

It is important to note that the following Office of Management and Budget (OMB) circulars are applicable, and particular attention should be given to the provisions concerning the use of federal funds for matching requirements.

OMB Circular A–102 (Grants and Cooperative Agreements with State and Local Governments) establishes consistency and uniformity among federal agencies in the management of grants and cooperative agreements with state, local, and federally recognized Indian tribal governments. The circular

provides that state and local administration of federal funds must include fiscal and administrative requirements that are sufficiently specific to ensure that funds are used in compliance with all applicable federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not to be used for general expenses required to carry out other responsibilities of a state or its subrecipients. HUD's implementation of OMB Circular A–102 is found at 24 CFR part 85.

OMB Circular A–110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) sets forth standards for obtaining consistency and uniformity among federal agencies in the administration of grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations. This circular specifies the conditions for which funds may be used for cost sharing or matching and provides that federal funds shall not be accepted as cost sharing or matching, except where authorized by federal statute to be used for cost sharing or matching. HUD's implementation of OMB Circular A–110 is found at 24 CFR part 84.

OMB Circular A–87 (2 CFR Part 225) (Cost Principles for State, Local, and Indian Tribal Governments) establishes principles and standards for determining costs for federal awards carried out through grants, cost reimbursement contracts, and other agreements with state and local governments and federally recognized Indian tribal governments (governmental units). This circular provides that an allowable cost under a federal award does not include a cost sharing or matching requirement of any other federal award in the applicable funding period, except as specifically provided by federal law or regulation.

OMB Circular A–122 (2 CFR 230) (Cost Principles for Non-Profit Organizations) establishes principles for determining costs of grants, contracts, and other agreements with nonprofit organizations. This circular provides, similar to OMB Circular A–87, that an allowable cost under a federal award in the applicable funding period does not include a cost sharing or matching requirement of any other federally financed program.

Note: Applicants for funding under HUD's FY2009 NOFA are reminded of the importance of confirming that any federal grant funds that they intend to use as a cost sharing or matching share are available to be used as matching funds under applicable statutes and regulations.

C. *Other Requirements and Procedures Applicable to All Programs.* Except as may be modified in the individual program NOFAs, the requirements, procedures, and principles listed below apply to all HUD programs in FY2009 for which funding is announced by NOFA and published in the **Federal Register**. Please read the individual program NOFAs for additional requirements and information.

1. *Statutory and Regulatory Requirements.* To be eligible for funding under HUD NOFAs issued during FY2009, applicants must meet all statutory and regulatory requirements applicable to the program or programs for which they seek funding. Applicants requiring program regulations may obtain them from the NOFA Information Center or through HUD's grants Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* See the individual program NOFAs for instructions on how HUD will respond to proposed activities that are ineligible.

2. *Threshold Requirements.*

a. *Ineligible Applicants.* HUD will not consider an application from an ineligible applicant.

b. *Dun and Bradstreet Data Universal Numbering System (DUNS) Number Requirement.* All applicants seeking funding directly from HUD must obtain a DUNS number and include the number in their Application for Federal Assistance submission. Failure to provide a DUNS number will prevent an applicant from obtaining an award, regardless of whether it is a new award or renewal of an existing one. This policy is pursuant to the OMB policy issued in the **Federal Register** on June 27, 2003 (68 FR 38402). HUD published its regulation implementing the DUNS number requirement on November 9, 2004 (69 FR 65024). A copy of the OMB **Federal Register** notice and HUD's regulation implementing the DUNS number can be found on HUD's Web site at *http://www.hud.gov/offices/adm/grants/duns.cfm.* When registering with Dun and Bradstreet, please be sure to use the organization's legal name that is used when filing a return with or making payments to the Internal Revenue Service. Organizations should also provide the zip code using the zip code plus the four additional digits. The DUNS number used in the application must be for the applicant organization, not the entity submitting the application on behalf of the applicant.

c. *Compliance with Fair Housing and Civil Rights Laws.*

(1) With the exception of federally recognized Indian tribes and their instrumentalities, applicants must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105(a). If you are a federally recognized Indian tribe, you must comply with the nondiscrimination provisions enumerated at 24 CFR 1000.12, as applicable. In addition to these requirements, there may be program-specific threshold requirements identified in the individual program NOFAs.

(2) If you, the applicant:

(a) Have been charged with an ongoing systemic violation of the Fair Housing Act; or

(b) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or

(c) Have received a letter of findings identifying ongoing systemic noncompliance under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974, and the charge, lawsuit, or letter of findings referenced in subparagraphs (a), (b), or (c) above has not been resolved to HUD's satisfaction before the application deadline, then you are ineligible and HUD will not rate and rank your application. HUD will determine if actions to resolve the charge, lawsuit, or letter of findings taken before the application deadline are sufficient to resolve the matter.

Examples of actions that would normally be considered sufficient to resolve the matter include, but are not limited to:

(i) A voluntary compliance agreement signed by all parties in response to a letter of findings;

(ii) A HUD-approved conciliation agreement signed by all parties;

(iii) A consent order or consent decree; or

(iv) An issuance of a final judicial ruling or a HUD Administrative Law Judge's decision.

d. *Conducting Business in Accordance with Core Values and Ethical Standards/Code of Conduct.* Applicants subject to 24 CFR parts 84 or 85 (most nonprofit organizations and state, local, and Indian tribal governments or government agencies or instrumentalities that receive federal awards of financial assistance) are required to develop and maintain a written code of conduct (see 24 CFR 84.42 and 85.36(b)(3)). Consistent with regulations governing specific programs, your code of conduct must prohibit real and apparent conflicts of interest that

may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees, or agents for their personal benefit in excess of minimal value; and outline administrative and disciplinary actions available to remedy violations of such standards. Before entering into an agreement with HUD, an applicant awarded assistance under a HUD program NOFA announced in FY2009 will be required to submit a copy of its code of conduct and describe the methods it will use to ensure that all officers, employees, and agents of its organization are aware of its code of conduct. An applicant is prohibited from receiving an award of funds from HUD if it fails to meet this requirement for a code of conduct. An applicant that previously submitted an application and included a copy of its code of conduct will not be required to submit another copy if the applicant is listed on HUD's Web site *http://www.hud.gov/offices/adm/grants/codeofconduct/cconduct.cfm,* and if the information has not been revised. An applicant not listed on the Web site must submit a copy of its code of conduct with its FY2009 application for assistance. An applicant must also include a copy of its code of conduct if the information listed on the above Web site has changed (*e.g.,* the person who submitted the previous application is no longer the authorized organization representative, the organization has changed its legal name or merged with another organization, or the address of the organization has changed, etc.). Any applicant that needs to may submit its code of conduct to HUD via facsimile using the form HUD–96011, ''Facsimile Transmittal'' (''Third Party Documentation Facsimile Transmittal'' on Grants.gov) at the time of application submission. This form is available as part of your application package that was downloaded from Grants.gov. When using the facsimile transmittal form, please type the requested information. Use the form HUD–96011 as the cover page for the submission and include the following header in the top line of the form under *Name of Document Being Requested:* ''Code of Conduct for (insert your organization's name, city, and state).'' Fax the information to HUD's toll-free number at 800–HUD–1010. If you cannot access the 800 number or have problems, you may use 215–825–8798 (this is not a toll-free number). These are new numbers for FY2009 applications. These facsimile numbers are not those used for FY2008. If you use the wrong fax number, your fax will be entered as part of HUD's FY2008 database. HUD cannot search its FY2008 database to match FY2009 faxes to FY2009 applications. As a result, your application will be reviewed without faxed information if you fail to use the FY2009 fax numbers.

Continuum of Care applicants should follow the directions in the Continuum of Care program NOFA for submission of Codes of Conduct.

e. *Delinquent Federal Debts.* It is HUD policy, consistent with the purposes and intent of 31 U.S.C. 3720B and 28 U.S.C. 3201(e), that applicants with an outstanding federal debt will not be eligible to receive an award of funds from the Department unless: (1) A negotiated repayment schedule is established and the repayment schedule is not delinquent, or (2) other arrangements satisfactory to HUD are made prior to the award of funds by HUD. If arrangements satisfactory to HUD cannot be completed within 90 days of notification of selection, HUD will not make an award of funds to the applicant, but offer the award to the next eligible applicant. Applicants selected for funding, or awarded funds, must report to HUD changes in status of current agreements covering federal debt. HUD may withhold funding, terminate an award, or seek other remedies from a grantee if a previously agreed-upon payment schedule has not been adhered to or a new agreement with the federal agency to which the debt is owed has not been signed.

f. *Pre-Award Accounting System Surveys.* HUD may arrange for a pre-award survey of the applicant's financial management system if the recommended applicant has no prior federal support, if HUD's program officials have reason to question whether the applicant's financial management system meets federal financial management standards, or if the applicant is considered a high risk based upon past performance or financial management findings. HUD will not disburse funds to any applicant that does not have a financial management system that meets federal standards. (Please see 24 CFR 84.21 if you are an institution of higher education, hospital, or other nonprofit organization. See 24 CFR 85.20 if you are a state, local government, or federally recognized Indian tribe).

g. *Name Check Review.* Applicants are subject to a name check review process. Name checks are intended to reveal matters that significantly reflect on the applicant's management and financial integrity, including if any key individual has been convicted or is presently facing criminal charges. If the name check reveals significant adverse findings that reflect on the business integrity or responsibility of the applicant or any key individual, HUD reserves the right to: (1) Deny funding, or in the case of a renewal or continuing award, consider suspension or termination of an award immediately for cause, (2) require the removal of any key individual from association with management or implementation of the award, and (3) make appropriate provisions or revisions with respect to the method of payment or financial reporting requirements.

h. *False Statements.* A false statement in an application is grounds for denial or termination of an award and possible punishment, as provided in 18 U.S.C. 1001.

i. *Prohibition Against Lobbying Activities.* Applicants are subject to the provisions of Section 319 of Public Law 101–121 (approved October 23, 1989) (31 U.S.C. 1352) (the Byrd Amendment), which prohibits recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the federal government in connection with a specific contract, grant, or loan. In addition, applicants must disclose, using Standard Form LLL (SF–LLL), ''Disclosure of Lobbying Activities,'' any funds, other than federally appropriated funds, that will be or have been used to influence federal employees, members of Congress, or congressional staff regarding specific grants or contracts. Federally recognized Indian tribes and tribally designated housing entities (TDHEs) established by federally recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but state-recognized Indian tribes and TDHEs established only under state law must comply with this requirement. Applicants must submit the SF–LLL if they have used or intend to use federal funds for lobbying activities.

j. *Debarment and Suspension.* In accordance with 2 CFR part 2424, no award of federal funds may be made to applicants that are presently debarred or suspended, or proposed to be debarred or suspended from doing business with the federal government.

3. *Other Threshold Requirements.* The individual program NOFAs for which you are applying may specify other threshold requirements. Additional threshold requirements may be identified in the discussion of ''eligibility'' requirements in the individual program NOFAs. If a program NOFA requires a certification of consistency with the Consolidated Plan and the applicant fails to provide

a certification, and such failure is not cured as a technical deficiency, HUD will not fund the application. If HUD is provided a signed certification indicating consistency with the area's approved Consolidated Plan and HUD finds that the activities are not consistent with the Consolidated Plan, HUD will not fund the inconsistent activities or will deny funding the application if a majority of the activities are not consistent with the approved Consolidated Plan. The determination not to fund an activity or to deny funding may be determined by a number of factors, including the number of activities being proposed, the impact of the elimination of the activities on the proposal, or the percent of the budget allocated to the proposed activities.

4. *Additional Nondiscrimination and Other Requirements.* Applicants and their subrecipients must comply with:

a. *Civil Rights Laws,* including the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), the Age Discrimination Act of 1974 (42 U.S.C. 6101 *et seq.*), and Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 *et seq.*).

b. *Affirmatively Furthering Fair Housing.* Under section 808(e)(5) of the Fair Housing Act, HUD has a statutory duty to affirmatively further fair housing. HUD requires the same of its funding recipients. If you are a successful applicant, you will have a duty to affirmatively further fair housing opportunities for classes protected under the Fair Housing Act. Protected classes include race, color, national origin, religion, sex, disability, and familial status. Unless otherwise instructed in the individual program NOFA, your application must include specific steps to:

(1) Overcome the effects of impediments to fair housing choice that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice (See Certification requirements under 24 CFR 91.225);

(2) Remedy discrimination in housing; and

(3) Promote fair housing rights and fair housing choice.

Further, you, the applicant, have a duty to carry out the specific activities provided in your responses to the individual program NOFA rating factors that address affirmatively furthering fair housing. These requirements apply to all HUD programs announced via a NOFA, unless specifically excluded in the individual program NOFA.

c. *Economic Opportunities for Low- and Very Low-Income Persons (Section 3).* Certain programs to be issued during FY2009 require recipients of assistance to comply with section 3 of the Housing and Urban Development Act of 1968 (Section 3), 12 U.S.C. 1701u (Economic Opportunities for Low- and Very Low-Income Persons in Connection with Assisted Projects), and the HUD regulations at 24 CFR part 135. Review the individual program NOFAs to determine if section 3 applies to the program for which you are seeking funding. Section 3 requires recipients to ensure, to the greatest extent feasible, that training, employment, and other economic opportunities will be directed to low- and very-low income persons, particularly those who are recipients of government assistance for housing, and to business concerns that provide economic opportunities to low- and very low-income persons in the area in which the project is located. The section 3 regulations at 24 CFR part 135, subpart E, impose certain reporting requirements on recipients, including the submission of an annual report, using form HUD–60002 or HUD's online system at *http://www.hud.gov/offices/fheo/section3/section3.cfm.* Grantees reporting Section 3 activities in paper format should mail the report to: U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Economic Development Opportunity Division, 451 7th Street, SW., Room 5232, Washington, DC 20410.

The annual report is highly important to the Department in determining compliance with Section 3. Applicants are placed on notice that they are required to annually report section 3 data, as applicable. Failure to meet reporting requirements can result in sanctions such as debarment, suspension, or denial of participation in HUD programs (24 CFR 135.76(g)).

d. *Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-Owned Businesses.* HUD is committed to ensuring that small businesses, small disadvantaged businesses, and women-owned businesses participate fully in HUD's direct contracting and in contracting opportunities generated by HUD financial assistance. Too often, these businesses still experience difficulty accessing information and successfully bidding on federal contracts. State, local, and Indian tribal governments are required by 24 CFR 85.36(e) and nonprofit recipients of assistance (grantees and subgrantees) by 24 CFR 84.44(b) to take all necessary affirmative steps in contracting for the purchase of goods or services to assure that minority firms, women-owned business enterprises, and labor surplus area firms are used whenever possible or as specified in the individual program NOFAs.

e. *Real Property Acquisition and Relocation.* Except as otherwise provided by federal statute, HUD-assisted programs or projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (42 U.S.C. 4601), and the governmentwide implementing regulations issued by the U.S. Department of Transportation at 49 CFR part 24. The Uniform Act's protections and assistance apply to acquisitions of real property and displacements resulting from the acquisition, rehabilitation, or demolition of real property for federal or federally assisted programs or projects. With certain limited exceptions, real property acquisitions for a HUD-assisted program or project must comply with 49 CFR part 24, subpart B. To be exempt from the URA's acquisition policies, real property acquisitions conducted without the threat or use of eminent domain, commonly referred to as ''voluntary acquisitions,'' must satisfy the applicable requirements of 49 CFR 24.101(b)(1) through (5). Evidence of compliance with these requirements must be maintained by the recipient. The URA's relocation requirements remain applicable to any tenant who is displaced by an acquisition that meets the requirements of 49 CFR 24.101(b)(1) through (5).

The relocation requirements of the Uniform Act, and its implementing regulations at 49 CFR part 24, cover any person who moves permanently from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD assistance. While there are no statutory provisions for ''temporary relocation'' under the URA, the URA regulations recognize that there are circumstances where a person will not be permanently displaced but may need to be moved from a project for a short period of time. Appendix A of the URA regulation (49 CFR 24.2(a)(9)(ii)(D)) explains that any tenant who has been temporarily relocated for a period beyond one year must be contacted by the displacing agency and offered URA relocation assistance. Some HUD program regulations provide additional protections for temporarily relocated tenants. For example, 24 CFR 583.310(f)(1) provides guidance on temporary relocation for the Supportive Housing Program for the homeless. Before planning their project, applicants

should review the regulations for the programs for which they are applying. Generally, the URA does not apply to displacements resulting from the demolition or disposition of public housing covered by section 18 of the United States Housing Act of 1937.

Additional information and resources pertaining to real property acquisition and relocation for HUD-funded programs and projects are available on HUD's Real Estate Acquisition and Relocation Web site at *http://www.hud.gov/relocation.* The Web site contains applicable laws and regulations, policy and guidance, publications, training resources, and a listing of HUD contacts to answer questions or otherwise provide assistance.

f. *Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency (LEP).''* Executive Order 13166 seeks to improve access to federally assisted programs and activities for individuals who, as a result of national origin, are limited in their English proficiency. Applicants obtaining federal financial assistance from HUD shall take reasonable steps to ensure meaningful access to their programs and activities to LEP individuals. As an aid to recipients, HUD published *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (LEP Guidance) in the **Federal Register** on January 22, 2007 (72 FR 2732). For assistance and information regarding LEP obligations, go to *http://www.hud.gov/offices/fheo/promotingfh/lep.cfm.* A link to the LEP Guidance can be found on that page.

g. *Executive Order 13279, ''Equal Protection of the Laws for Faith-Based and Community Organizations.''* HUD is committed to full implementation of Executive Order 13279. The Executive Order established fundamental principles and policymaking criteria to guide federal agencies in formulating and developing policies that have implications for faith-based and community organizations, to ensure the equal protection for these organizations in social service programs receiving federal financial assistance. Consistent with this order, HUD has reviewed all Departmental policies and regulations that have implications for faith-based and community organizations and has established a policy priority to provide full and equal access to grassroots faith-based and other community organizations in HUD program implementation. HUD revised its program regulations in 2003 and 2004 to remove the barriers to participation by faith-based organizations in HUD funding programs (68 FR 56396, September 30, 2003; 69 FR 41712, July 9, 2004; and 69 FR 62164, October 22, 2004). Copies of the regulatory changes can be found at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.*

h. *Accessible Technology.* Section 508 of the Rehabilitation Act (Section 508) requires HUD and other federal departments and agencies to ensure, when developing, procuring, maintaining, or using electronic and information technology (EIT), that the EIT allow, regardless of the type of medium, persons with disabilities to access and use information and data on a comparable basis as is made available to and used by persons without disabilities. Section 508's coverage includes, but is not limited to, computers (hardware, software, word processing, e-mail, and Internet sites), facsimile machines, copiers, and telephones. Among other things, Section 508 requires that, unless an undue burden would result to the federal department or agency, EIT must allow individuals with disabilities who are federal employees or members of the public seeking information or services to have access to and use of information and data on a comparable basis as that made available to employees and members of the public who are not disabled. Where an undue burden exists to the federal department or agency, alternative means may be used to allow a disabled individual use of the information and data. Section 508 does not require that information services be provided at any location other than a location at which the information services are generally provided. HUD encourages its funding recipients to adopt the goals and objectives of Section 508 by ensuring, whenever EIT is used, procured, or developed, that persons with disabilities have access to and use of the information and data made available through the EIT on a basis comparable as is made available to and used by persons without disabilities. This does not affect recipients' required compliance with section 504 of the Rehabilitation Act and, where applicable, the Americans with Disabilities Act. Applicants and recipients seeking further information on accessible technology should go to *http://www.section508.gov/.*

i. *Procurement of Recovered Materials.* State agencies and agencies of a political subdivision of a state that are using assistance under a HUD program NOFA for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

In accordance with section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired in the preceding fiscal year exceeded $10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

j. *Participation in HUD-Sponsored Program Evaluation.* As a condition of the receipt of financial assistance under a HUD program NOFA, all successful applicants will be required to cooperate with all HUD staff or contractors who perform HUD-funded research or evaluation studies.

k. *Executive Order 13202, ''Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.''* Compliance with HUD regulations at 24 CFR 5.108 that implement Executive Order 13202 is a condition of receipt of assistance under a HUD program NOFA.

l. *Salary Limitation for Consultants.* FY2009 funds may not be used to pay or to provide reimbursement for payment of the salary of a consultant at a rate more than the equivalent of General Schedule 15, Step 10.

m. *OMB Circulars and Governmentwide Regulations Applicable to Financial Assistance Programs.* Certain OMB Circulars (2 CFR 225) also apply to HUD program NOFAs. The policies, guidance, and requirements of OMB Circulars A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements With State and Local Governments), A–21 (Cost Principles for Education Institutions), A–122 (Cost Principles for Non-Profit Organizations), A–133 (Audits of States, Local Governments, and Non-Profit Organizations), and the regulations at 24 CFR part 84 (Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations), and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements

to State, Local, and Federally Recognized Indian Tribal Governments) may apply to the award, acceptance, and use of assistance under the individual program NOFAs, and to the remedies for noncompliance, except when inconsistent with the provisions of HUD's Appropriations Act for FY2009, other federal statutes or regulations, or the provisions of this notice. Compliance with additional OMB circulars or governmentwide regulations may be specified for a particular program in the Program Section NOFA. Copies of the OMB circulars may be obtained from *http://www.whitehouse.gov/omb/circulars/index.html,* or the Executive Office of the President Publications, New Executive Office Building, Room 2200, Washington, DC 20503; telephone number 202–395–3080 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number by dialing 800–877–8339 (toll-free TTY Federal Information Relay Service).

n. *Environmental Requirements.* If you become a recipient under a HUD program that assists in physical development activities or property acquisition, you are generally prohibited from acquiring, rehabilitating, converting, demolishing, leasing, repairing, or constructing property, or committing or expending HUD or non-HUD funds for these types of program activities, until one of the following has occurred:

(1) HUD has completed an environmental review in accordance with 24 CFR part 50; or

(2) For programs subject to 24 CFR part 58, HUD has approved a recipient's Request for Release of Funds (form HUD–7015.15) following a responsible entity's completion of an environmental review.

You, the applicant, should consult the individual program NOFA for any program for which you are interested in applying to determine the procedures for, timing of, and any modifications or exclusions from environmental review under a particular program.

o. *Conflicts of Interest.* If you are a consultant or expert who is assisting HUD in rating and ranking applicants for funding under HUD NOFAs published in FY2009, you are subject to 18 U.S.C. 208, the federal criminal conflict-of-interest statute, and the Standards of Ethical Conduct for Employees of the Executive Branch regulation published at 5 CFR part 2635. As a result, if you have assisted or plan to assist applicants with preparing applications for NOFAs published in FY2009, you may not serve on a selection panel and you may not serve as a technical advisor to HUD. Persons involved in rating and ranking HUD FY2009 NOFAs, including experts and consultants, must avoid conflicts of interest or the appearance of such conflicts. Persons involved in rating and ranking applications must disclose to HUD's General Counsel or HUD's Ethics Law Division the following information, if applicable, how the selection or non-selection of any applicant under FY2009 NOFAs will affect the individual's financial interests, as provided in 18 U.S.C. 208, or how the application process involves a party with whom the individual has a covered relationship under 5 CFR 2635.502. The person must disclose this information before participating in any matter regarding an FY2009 NOFA. If you have questions regarding these provisions or concerning a conflict of interest, you may call the Office of General Counsel, Ethics Law Division, at 202–708–3815 (this is not a toll-free number).

p. *Drug-Free Workplace.* Applicants awarded funds from HUD are required to provide a drug-free workplace. Compliance with this requirement means that the applicant will:

(1) Publish a statement notifying employees that it is unlawful to manufacture, distribute, dispense, possess, or use a controlled substance in the applicant's workplace and that such activities are prohibited. The statement must specify the actions that will be taken against employees for violation of this prohibition. The statement must also notify employees that, as a condition of employment under the federal award, they are required to abide by the terms of the statement and that each employee must agree to notify the employer in writing of any violation of a criminal drug statute occurring in the workplace no later than 5 calendar days after such violation;

(2) Establish an ongoing drug-free awareness program to inform employees about:

(a) The dangers of drug abuse in the workplace;

(b) The applicant's policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, or employee maintenance programs; and

(d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Notify the federal agency in writing within 10 calendar days after receiving notice from an employee of a drug abuse conviction or otherwise receiving actual notice of a drug abuse conviction. The notification must be provided in writing to HUD's Office of Departmental Grants Management and Oversight, Department of Housing and Urban Development, 451 7th Street, SW., Room 3156, Washington DC 20410–3000, along with the following information:

(a) The program title and award number for each HUD award covered;

(b) The HUD staff contact name, telephone, and fax numbers;

(c) A grantee contact name, telephone, and fax numbers; and

(4) Require that each employee engaged in the performance of the federally funded award be given a copy of the drug-free workplace statement required in item (1) above and notify the employee that one of the following actions will be taken against the employee within 30 calendar days of receiving notice of any drug abuse conviction:

(a) Institution of a personnel action against the employee, up to and including termination consistent with requirements of the Rehabilitation Act of 1973, as amended; or

(b) Imposition of a requirement that the employee participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

q. *Safeguarding Resident/Client Files.* In maintaining resident and client files, HUD funding recipients shall observe state and local laws concerning the disclosure of records that pertain to individuals. Further, recipients are required to adopt and take reasonable measures to ensure that resident and client files are safeguarded. This includes when reviewing, printing, or copying client files.

r. *Compliance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282) (Transparency Act).* Applicants receiving an award from HUD should be aware of the requirements of the Transparency Act. The Transparency Act requires the establishment of a central Web site that makes information available to the public regarding entities receiving federal financial assistance, by not later than January 1, 2008. In fulfillment of the requirements of the Act, OMB launched *http://www.USAspending.gov* in December 2007. The Web site makes information available to the public on the direct awards made by the federal government. The Transparency Act also requires, beginning not later than January 2009, that data on subawards be made available on the same Web site. In anticipation of the implementation of this requirement, HUD is placing

awardees of its FY2009 competitive funding on notice of these requirements and note that once implemented, grantees will be required to report their subaward data to HUD or a central federal database. The only exceptions to this requirement under the Transparency Act are: (1) Federal transactions below $25,000, (2) credit card transactions prior to October 1, 2008, (3) awards to entities that demonstrate to the Director of OMB that the gross income of such entity from all sources did not exceed $300,000 in the previous tax year of such entity, and (4) awards to individuals. Guidance for receiving an exception under item (3) above has not been finalized by OMB.

HUD is responsible for placing award information for direct grantees on the government Web site. The reporting of subaward data is the responsibility of the grantee. Grantees should be aware that the law requires the information provided on the federal Web site to include the following elements related to all subaward transactions, except as noted above:

(a) The name of the entity receiving the award;

(b) The amount of the award;

(c) Information on the award including the transaction type, funding agency, the North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number (where applicable), program source, and an award title descriptive of the purpose of each funding action;

(d) The location of the entity receiving the award and primary location of performance under the award, including the city, state, congressional district, and country;

(e) A unique identifier of the entity receiving the award and of the parent entity of the recipient (the DUNS number), should the entity be owned by another entity; and

(f) Any other relevant information specified by OMB.

HUD expects OMB to issue further guidance on subaward reporting in late 2008 or early 2009. Based on preliminary input from the various federal agencies, applicants should be aware that consideration is being given to requiring the disclosure of additional data elements to help track the flow of funding from the original federal award. Such data elements under consideration include the tier at which the subaward was made, the federal award number issued to the direct awardee, the dollar amount of the federal award emanating from the direct award going to the subawardee, as well as the total subaward amount, which could include funds from other sources. Additional information regarding these requirements will be issued by OMB and will be provided when available.

IV. Application and Submission Information

A. Addresses To Request Application Package

This section describes how applicants may obtain application forms and request technical assistance.

1. *Technical Assistance and Resources for Grants.gov Electronic Grant Applications.*

a. Grants.gov Customer Support. Grants.gov provides customer support information on its Web site at *http://www.grants.gov/contactus/contactus.jsp*. Applicants having difficulty accessing the application and instructions or having technical problems can receive customer support from Grants.gov by calling 800–518–GRANTS (this is a toll-free number) or by sending an e-mail to *support@grants.gov*. The customer support center is open from 7 a.m. to 9 p.m. eastern time, Monday through Friday, except federal holidays. The customer service representatives will assist applicants in accessing the information and addressing technology issues, including accessibility problems, in accordance with section 508 of the Rehabilitation Act (See paragraph 4(h), Accessible Technology). Applicants should ask for a Grants.gov call center ticket number if not provided one by the call center customer service representative. In case of issues, HUD relies on the call center ticket logs as part of the review of records.

b. *HUD Web site.* The following documents and information can be found on HUD's Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm*.

(1) *Desktop Users Guide for Submitting Electronic Grant Applications.* HUD will publish on its Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm* an update to its detailed Desktop Users Guide that walks applicants through the electronic process, beginning with finding a funding opportunity, completing the registration process, and downloading and submitting the electronic application. The guide will include helpful step-by-step instructions, screen shots, and tips to assist applicants in becoming familiar with submitting applications electronically and overcoming submission issues, based upon past lessons learned from working with applicants and the Grants.gov Project Management Office (PMO).

(2) *Connecting with Communities: A User's Guide to HUD Programs and the FY2009 NOFA Process Guidebook.* This guidebook to HUD programs will be available from the HUD NOFA Information Center and at HUD's Funds Available Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm* after the publication of the General Section and when appropriations have been enacted for FY2009. The guidebook provides a brief description of all HUD programs that have funding available in FY2009, identifies eligible applicants for the programs and the program office responsible for the administration of the program.

(3) *NOFA Webcasts.* HUD provides technical assistance and training on its programs announced through its NOFAs. The NOFA broadcasts are interactive and allow potential applicants to obtain a better understanding of the threshold, program, and application submission requirements for funding. Participation in this training opportunity is free of charge and can be accessed via HUD's Web site. The NOFA webcast schedule can be found via HUD's Web site at *http://www.hud.gov/webcasts/index.cfm*.

c. *HUD's NOFA Information Center.* Applicants that do not have Internet access and need to obtain a copy of a NOFA can contact HUD's NOFA Information Center, toll free, at 800-HUD–8929. Persons with hearing or speech impairments may access this number, toll free, via TTY by calling the Federal Information Relay Service at 800–877–8339. The NOFA Information Center is open between the hours of 10 a.m. and 6:30 p.m. eastern time, Monday through Friday, except federal holidays.

d. *HUD Staff.* HUD staff will be available to provide you with general guidance and technical assistance about this notice or about individual program NOFAs. However, HUD staff is not permitted to help prepare your application. Following selection of applicants, but before announcement of awards, HUD staff is available to assist in clarifying or confirming information that is a prerequisite to the offer of an award or annual contributions contract (ACC) by HUD. If you have program-related questions, follow the instructions in section VII of the Program Section entitled ''Agency Contact(s)'' in the program NOFA under which you are applying. If you have difficulty in submitting your application, please first contact the Grants.gov Help Desk. The Grants.gov Help Desk can be reached by calling

800–518–GRANTS or e-mailing *Support@Grants.gov*. HUD recommends calling the Help Desk rather than e-mailing, because determining the basis for the problem may take some conversation with the Grants.gov Support Customer Service Representative. Grants.gov can try to assist you in overcoming technology obstacles, but can only provide assistance with 24 to 48 hours advance notice so it has resources and time to diagnose the problems. Applicants are reminded to retain any Grants.gov Help Desk ticket number(s).

B. Content and Form of Application Submission

1. *Use of Adobe Forms Application Packages.* In FY2009, HUD is again using Adobe Forms in the application packages available from Grants.gov. The Adobe Forms packages are compatible with the Microsoft Windows Vista operating system, Apple Macintosh computers, and Microsoft Office 2007. For more information, see the Grants.gov Web site at *http://www.grants.gov/assets/Vista_and_office_07_Compatibility.pdf*. Applicants need to pay strict attention to the submission instructions provided in this notice to have a successful submission using the Adobe Forms packages.

2. *Instructions on How to Register for Electronic Application Submission.* Applicants must submit their applications electronically through Grants.gov. Before you can do so, you must complete several important steps to register as a submitter. The registration process can take approximately 2 to 4 weeks to complete. Therefore, registration should be done in sufficient time before you submit your application. To register, applicants must complete five sequential steps:

a. *Step One:* Obtain a Dun and Bradstreet Data Universal Numbering System (DUNS);

b. *Step Two:* Register with the CCR;

c. *Step Three:* Register with the Credential Provider;

d. *Step Four:* Register with Grants.gov; and

e. *Step Five:* Granting Approval of an AOR to Submit an Application on Behalf of the Organization.

All five steps must be completed to have a valid registration and to be able to successfully submit an application via Grants.gov. Detailed explanation of each step and important information related to each step in the process is available in HUD's Early Registration notice, published December 5, 2008 (73 FR 74179). Detailed information is also described below.

3. *Key Terms Used as Part of the Registration Process.*

a. *Applicant Organization.* The applicant organization is an entity that is identified as the legal applicant for funding in box 8a on the SF–424, Application for Federal Assistance, and is the organization that HUD will hold accountable to fulfill the requirements of the award, should the applicant be selected for funding. Grant writers or persons authorized to submit an application for funding by the applicant organization eBusiness Point of Contact (see definition below) must not enter their organization or their organization's DUNS number in the SF–424, Application for Federal Assistance. Grant writers who wish to submit an application on behalf of an applicant organization must become an AOR to submit the application. (See definition of Authorized Organization Representative below, and registration instructions for AORs later in this notice).

b. *Authorized Organization Representative (AOR).* The applicant organization (applicant legal name on box 8a of the SF–424) E-Biz POC must grant permission for a person to become an AOR and submit an application on behalf of the applicant organization through the Grants.gov system. Authorizing an AOR safeguards the applicant organization from unauthorized individuals who may attempt to submit a grant application without permission. To check the AOR status, go to *https://apply07.grants.gov/apply/ApplicantLoginGetID*. Then, using the user name and password (obtained from the Credential Provider), check to see if the E-Biz POC has granted approval or if the request to be an AOR is noted as ''Request Sent.'' If the information says ''Request Sent,'' the approval has not been granted. AORs are advised to contact the E-Biz POC to determine the basis for the lack of approval. A proposed AOR cannot submit the application to Grants.gov without AOR status noted as ''Approved.''

c. *eBusiness Point of Contact (E-Biz POC).* The E-Biz POC is identified during the Central Contractor Registration Process (Step 2 of the Registration Process). The E-Biz POC must grant authority for a person to be the AOR. An E-Biz POC may serve as an AOR as well as an E-Biz POC. The E-Biz POC becomes the sole Grants.gov authority for the organization and has the capability of designating or revoking an AOR's ability to submit a grant application on behalf of the organization using the Grants.gov system.

d. *Marketing Partner ID Number (MPIN).* As part of the CCR Registration Process, the E-Biz POC will be asked to create an MPIN. The MPIN is a nine character (alpha numeric) password that is used to access other systems and should be well guarded. For organizations wishing to apply for federal grants using the Grants.gov system, the MPIN is required for the E-Biz POC to log into the Grants.gov system and grant the person requesting permission to be an AOR, the permission to submit the grant on behalf of the applicant organization.

e. *Trading Partner Identification Number (TPIN).* A TPIN is a password that is used to access the applicant organization's Central Contractor Registration (CCR) data. Organizations that become active in CCR are issued a TPIN (password) to access their record in order to make, or request, any changes or updates to their CCR registration. Because of the sensitivity of this data, CCR recommends that CCR registrants not disclose their TPIN to anyone under any circumstances.

4. *Instructions on Completing the Registration Process for New Applicants or Applicants Updating or Renewing Registration.*

a. *The Need to Register with Grants.gov.*

HUD provides funding to organizations only. This information, therefore, is directed to HUD applicants that are organizational entities.

Before an applicant can apply for a grant opportunity, the applicant must first register with Grants.gov to provide and obtain certain identifying information. Please note that registration is a multi-step process. The registration process also requires the applicant organization to provide information at Web sites other than Grants.gov. Registration protects both HUD and the applicant. Specifically, registration confirms that the applicant organization E-Biz POC has designated and authorized a certain individual or entity to submit an application on its behalf and assures HUD that it is interacting with a designated representative of the applicant who has been authorized to submit the application.

b. *Steps to Register.* HUD's NOFA process requires applicants to submit applications electronically through Grants.gov. Before being able to do so, applicants must complete several important steps to register or update/renew their registration to be able to submit the application. The registration process can take approximately 2 to 4 weeks to complete.

(1) *Step One: Obtain a Dun and Bradstreet Data Universal Numbering System (DUNS).* Step One of the registration process requires an applicant organization to obtain a DUNS number for the organizational entity for which an application for federal assistance will be submitted. All organizations seeking funding directly from HUD must have a DUNS number and include the number on the form SF–424, Application for Federal Assistance, which is part of the application package. The DUNS number is also required as part of the registration process. If the applicant organizational entity identified in box 8a on the SF–424 already has a DUNS number, it must use that number. The number must be registered with the legal name of the organizational entity. Failure to provide a DUNS number or the correct DUNS number associated to the applicant organization legal name as entered on the form SF–424, box 8a and CCR can prevent you from submitting a grant application or obtaining an award, regardless of whether it is a new award or renewal of an existing one. This policy is pursuant to OMB policy issued in the **Federal Register** on June 27, 2003 (68 FR 38402). HUD codified the DUNS number requirement on November 9, 2004 (69 FR 65024). A copy of the OMB **Federal Register** notice and HUD's regulation codifying the DUNS number requirement can be found at *http://www.hud.gov/offices/adm/grants/duns.cfm.* Applicants cannot submit an electronic application without a DUNS number. An incorrect DUNS number in an application package will result in Grants.gov rejecting the application, because the DUNS number entered in the application will not be consistent with the DUNS number associated to the applicant legal name as entered in box 8a of the form SF–424, CCR, and Internal Revenue Service (IRS) records. The applicant legal name and DUNS number used on the application must match the DUNS number and organization name used in the CCR. Applicants must note that information entered and used to obtain the DUNS number will be used to pre-populate the CCR, which is Step Two of the registration process. Applicants should, therefore, carefully review information entered when obtaining a DUNS number. When registering with Dun and Bradstreet (D&B), please be sure to use the organizational entity's legal name used when filing a return or making a payment to the Internal Revenue Service (IRS). Organizations should also provide the zip code using the zip code plus four code (Zip+4).

Applicants can obtain a DUNS number by calling 866–705–5711 option 4 for grant applicants. (This is a toll-free number.) Applicants in Alaska and Puerto Rico can call 800–234–3867. The approximate time to get a DUNS number is 10 to 15 minutes, and there is no charge. Applicants may also obtain a DUNS number by accessing the D&B Web site at *http://fedgov.dnb.com/webform.* The approximate time to create the number online is one business day. After obtaining a DUNS number, applicants should wait 24 to 48 hours to register with the CCR so that its DUNS number has time to become activated in the D&B records database.

(2) *Step Two: Register with the CCR.* The second step of the registration process is registering with the CCR. The CCR is the primary registrant database for the federal government. An organization planning to submit a grant application for the first time must register, using its legal business name and name used with the IRS. CCR allows you to establish roles and user names for representatives that will use Grants.gov to submit electronic grant applications. Applicant organizations must annually update or renew their registration at *http://www.ccr.gov,* by clicking on the link entitled ''Update or Renew Registration.'' If you need assistance with the CCR registration process, you can contact the CCR Assistance Center, 24 hours a day, 7 days a week, at 888–277–2423 or 269–961–5757. Applicants can also obtain assistance online at *http://www.ccr.gov.* A CCR Handbook that guides applicants through the registration process is available on the CCR Web site by clicking on ''Help.'' If an applicant organization fails to update/renew its CCR registration, the Grants.gov registration will lapse prohibiting the application from being accepted by Grants.gov due to failure to have a complete registration. Registration, including update/renewal, can take several weeks as CCR compares its records to those maintained by D&B and the IRS. The records of D&B, CCR, and the IRS must match. If discrepancies arise, Step Two cannot be completed until the discrepancies are resolved. For this reason, HUD urges applicants to complete the CCR registration, or update/renew its existing registration, immediately. Otherwise, the CCR check with D&B and IRS records may delay completing the registration process and adversely affect the ability to submit a grant application. The CCR registration process consists of completing a Trading Partner Profile (TPP), which contains general, corporate, and financial information about your organization. When completing the TPP, you will be required to identify an E-Biz POC, responsible for maintaining the information in the TPP and granting authorization to individuals to serve as AORs. An AOR is the individual who will submit the application through Grants.gov for the applicant organization. Applicants can check the CCR registration and E-Biz POC by going to *http://www.ccr.gov* and search by clicking on ''Search CCR.''

(a) *CCR Use of D&B Information.* In July 2006, CCR implemented a policy change. Under this policy change, instead of obtaining name and address information directly from the registrant, CCR obtains the following data fields from D&B: Legal Business Name, Doing Business as Name (DBA), Physical Address, and Postal Code (Zip+4). Registrants will not be able to enter or modify these fields in CCR because they will be pre-populated using previously registered DUNS records data. During a new registration, or when updating a record, the registrant has a choice to accept or reject the information provided from the D&B records. If the registrant agrees with the D&B supplied information, the D&B data will be accepted into the CCR registrant record. If the registrant disagrees with the D&B supplied data, the registrant must go to the D&B Web site at *http://fedgov.dnb.com/webform* to modify the information contained in D&B's records before proceeding with its CCR registration. Once D&B confirms the updated information, the registrant must revisit the CCR Web site and ''accept'' D&B's changes. Only at this point will the D&B data be accepted into the CCR record. This process can take up to 2 business days for D&B to send modified data to CCR, and that timeframe may be longer if data is sent from abroad.

(b) *CCR EIN/TIN Validation.* To complete the CCR registration and qualify as a vendor eligible to bid for federal government contracts or apply for federal grants, the EIN/TIN and Employer/Taxpayer Name combination you provide in the IRS Consent Form must match exactly to the EIN/TIN and Employer/Taxpayer Name used in federal tax matters. It will take one to two business days to validate new and updated records prior to becoming active in CCR. Please be sure that the data items provided to D&B match information provided to the IRS. If the registration in D&B and the CCR do not match the IRS information, an error message will result. Until the discrepancies have been resolved, the registration will not be completed. HUD recommends that applicant

organizations carefully review their D&B and CCR registration information for accuracy immediately upon publication of this notice. If you have questions about your EIN/TIN, call 800–829–4933.

(c) *Detailed Steps for NEW applicant organizations to register with CCR.* The following is a step-by-step guide to help an applicant organization register with CCR. Additional assistance is available online at *http://www.ccr.gov*. Before beginning the CCR registration process, organizations should designate an individual who will be responsible for completing the CCR registration and managing the information entered into CCR. The listing below identifies the steps in the CCR registration process.

(i) Go to *http://www.ccr.gov/*. Once on the site, on the left side of the screen, click ''Start a New Registration.'' At the ''Start a New Registration'' screen, of the three choices, please select ''I am not a U.S. Federal Government entity.'' Click ''Continue.''

Note: CCR registration is NOT required for individuals; however, HUD does not directly fund individuals through its NOFA process.

(ii) The next screen provides review items that must be completed before continuing in CCR. After reviewing the information and all items have been completed, click ''Continue with Registration.''

(iii) To begin registration with CCR, enter the organization entity's DUNS number and click ''Next.''

(iv) At the next screen, ''New Registration,'' enter the organization's DUNS number. Then click ''Next.'' The next ''New Registration'' screen displays the DUNS number. The registrant will be prompted to enter the organization information, *e.g.*, name, address, etc. If the information inputted does not match that contained in the D&B record for the DUNS number provided, the system will state: ''Try again by correcting your input below'' or ''Contact D&B to make a change to your D&B DUNS record.''

(v) The next page of ''New Registration'' is ''Verify Your Results with D&B.'' Here the registrant will be asked, ''Is this information correct?'' After ensuring the accuracy of the information, click on ''Accept/Continue or Cancel.''

(vi) If you ''Accept/Continue,'' the confirmation number will be displayed. This is a temporary number that allows the registrant to save the registration as a work in progress. Print this page. A temporary number along with the organization DUNS number will let the registrant access CCR to complete the registration at a later date.

(vii) Continuing registration from the Confirmation page, click ''Continue.''

(viii) ''How to Complete your Registration'' is the next page. Once the information has been reviewed and found correct, click ''Continue.''

(ix) The ''General Information'' page is the next screen. On this page the registrant will need to complete all the required information.

(x) Creating a Marketing Partner ID Number (MPIN). The final step in creating the organization's TPP requires the registrant to create an MPIN. The MPIN is a self-defined nine character password that the E-Biz POC will need to access Grants.gov to authorize an AOR to be able to submit a grant application.

(xi) *Registration Notification*. If the registration was submitted successfully, the registrant will receive two letters through the U.S. Mail or via email. The first welcomes the registrant to CCR and includes a copy of the registration. The second contains the confidential TPIN. Receipt of the TPIN confirms successful registration in CCR and serves as the registrant's confidential password to change CCR information.

(d) *Detailed Steps for Updating/Renewing Current Registrations*.

(i) The E-Biz POC for the organization that is identified in box 8a of the SF–424 should go to *http://www.ccr.gov/*. Once on the Web site, on the left side of the screen, click ''Update or Renew Registration.'' At the ''Update Renew or Registration'' screen, of the three choices, please select ''I am not a U.S. Federal Government entity.'' Click ''Continue.''

Note: CCR registration is NOT required for individuals. HUD does not directly fund individuals through its NOFA process.

(ii) The next screen asks the E-Biz POC to enter the organization's DUNS number and TPIN number sent to the E-Biz POC at the time of the last update. Click ''Log In'' to continue.

Note: If the E-Biz POC can't remember the TPIN, the site provides a link to request the TPIN.

(iii) The next screen, ''General Information,'' displays the organization information. This site allows the E-Biz POC to update information contained in CCR. Once information has been reviewed and, as needed, updated, click on ''Validate/Save Data.''

Note: The E-Biz POC will validate and save data contained within CCR for Corporate Information, Goods/Services, Financial, Points of Contact, and IRS content. Once the information has been validated and saved in each required section, the last screen will indicate ''Registration Complete.''

(e) *Current Registrants without an MPIN*. If you currently have an active registration in CCR and you do not have an MPIN, you will need to do the following:

(i) Access the CCR Web site at *http://www.ccr.gov*. At the left margin, click on ''Update or Renew Registration.''

(ii) Select ''I am not a U.S. Federal Government entity.'' Click ''Continue.''

(iii) Enter the organization's DUNS number and TPIN.

(iv) On the next page, click on the link ''Points of Contact.'' Complete all fields for the E-Biz POC and the alternate E-Biz POC. Scroll down to the bottom of the Points of Contact page, and create your own MPIN. Once completed, click on the ''Validate/Save'' button.

Note to Active Registrants in CCR: A TPIN is a password that is used to access your CCR data. Organizations that become active in CCR are issued a TPIN (password) to access and maintain their data. Because of the sensitivity of this data, CCR recommends that you do not disclose your TPIN to anyone under any circumstances.

(3) *Step Three: Register with the Credential Provider*.

(a) *Registering with Credential Provider*. To safeguard the security of electronic information, Grants.gov utilizes a Credential Provider to determine with a degree of assurance that someone is really who he or she claims to be. Once the organization requesting funding has identified who will be submitting the Application for Federal Assistance on their behalf, the person to submit the application must register with a Credential Provider to create his/her user name and password. The user name and password created through the credential provider will be registered with Grants.gov as part of the next step in the registration process. To register with a credential provider, the designated person must have the organization's DUNS number that will be entered in box 8a of the form SF–424, Application for Federal Assistance. The organization's DUNS number used must be identical to the DUNS number for the organization found in the CCR registration.

Since August 30, 2007, organizations can choose from three federally approved credential providers available from which to choose their authentication services: The Agriculture Department; the Office of Personnel Management's Employee Express; and Operational Research Consultants (ORC), Inc., which also provided authentication services prior to August 30, 2007. Until January 11, 2009, or shortly thereafter, users who already hold a Grants.gov user name and password through ORC will not experience much change. New users

will be able to choose from any of the three credential providers available.

• To register with a credential provider, go to *http://apply07.grants.gov/apply/ORCRegister*. Once you have accessed the site, scroll down the page and enter the DUNS number, and click on ''Register.''

• At the next screen, scroll down and select ''Get Your Credentials.''

• On the ''eAuthentication User Information'' screen, complete and submit all information.

• On the next screen, confirm your information and create your own user name and password. Then click ''Submit.'' If all the information has been entered correctly, you will receive a notice of Registration Success.

(b) *Provision of Credentials by Grants.gov*. In January 2009, Grants.gov will be terminating service with the current Grants.gov credential provider, Operational Research Consultants (ORC). As a result of the change, Grants.gov will provide credentials (user name and passwords) to Grants.gov registrants.

(i) *New Grants.gov Registrants*. After January 2009, or when Grants.gov begins providing credential services, when clicking on the ''For Applicants'' link, new Grants.gov registrants will get a pop-up screen asking them to update their user profile. The information requested is similar to the information that was previously provided to ORC or one of the other credential providers. In addition to updating their user profile, registrants will be asked to enter a Secret Question and Secret Answer. The Secret Question and Secret Answer portion of the information provides for increased security for future inquiries about the registrants' account and allows registrants to reset their own password. Once created, users will be able to reset their password on their own. Previously, users needed to call the Grants.gov Help Desk to get a password or user name reset or go back to the credential provider to get a password they forgot.

(ii) *Existing/Legacy Registrants*. Grants.gov will retain the user name and password for existing/legacy registrants. However, existing/legacy registrants will have to update their profile by clicking on the ''For Applicants'' link, update their profile, and establish a Secret Question and Secret Answer. The automated user name and password reset feature will not work if the registrant has not updated his or her profile and created the Secret Question and Secret Answer.

(iii) *Forgot My User Name and Forgot My Password Links*. New and legacy applicants that updated their profile and created a Secret Question and Secret Answer will be able to use the ''Forgot My User Name'' and ''Forgot My Password'' links on the Applicant Login screen to have their user name and password sent to them via email. To do so, they will have to know their DUNS number and email address to retrieve and reset their user name and password.

Note: Registration to use Grants.gov to submit a funding application on behalf of an organization is not complete until Steps Four and Five below are completed.

(c) *Steps for Checking your Credentials*.

(i) Prior to January 11, 2009, or when Grants.gov begins to offer credential provider services, if you want to check your credentials prior to submitting an application, you may go to *http://e-auth.orc.com/*. Once you are on the E-Authentication site, scroll down the page and click on the link ''Check your Credentials.'' Then enter your user name and password. If you enter the correct information, you will receive a message that states, ''You have successfully verified your registration.'' If you have forgotten your password, click on the link ''User Administration'' and select ''Forgotten Password'' located in the left margin. On the next screen, enter your user name and click ''Submit.'' The next screen displays your secret question. Follow instructions on this screen and click ''Submit.'' Your password has been reset.

(ii) After January 11, 2009, or when Grants.gov offers credential provider services, AORs who have updated their profile and created the Secret Question and Secret Answer as a Grants.gov registrant can log into Grants.gov and obtain or reset their registered user names and password, or reset their user name or password through the Grants.gov automated service. If an applicant organization has multiple users, each registered Grants.gov user will have to update his or her Grants.gov user profile and create a Secret Question and Secret Answer. Questions about the changes to the Grants.gov registration process should be directed to the Grants.gov Help Desk at 800–518–GRANTS.

(4) *Step Four: Register with Grants.gov*.

(a) Prior to January 11, 2009, or prior to when Grants.gov offers credential provider services, after completing Step 3, creating a user name and password with the credential provider, the person(s) named by the applicant organization to submit an application for funding on behalf of the organization, and which is registered with a Credential Provider, must open an account with Grants.gov. Opening the account with Grants.gov identifies the person who, as an AOR for the organization seeking funding, is requesting permission to submit the application. The final step in the registration process is when the E-Biz POC for the applicant organization identified in Box 8a of the SF–424, Application for Federal Assistance actually grants authorization to the person identified as an AOR. (See Step Five below). To register with Grants.gov, go to *https://apply07.grants.gov/apply/GrantsgovRegister*.

After the proposed AOR registers his or her user name and password with Grants.gov, the organization's E-Biz POC will be sent an email indicating that someone has requested authority to submit an application for the organization and has registered as an AOR.

(b) After January 11, 2009, or when Grants.gov offers credential provider services, the person(s) named by the applicant organization to submit an application for funding on behalf of the organization must open an account with Grants.gov, or update their existing account. Opening the account with Grants.gov identifies the person as a proposed AOR seeking funding for the organization named in box 8a of the form SF–424, Application for Federal Assistance, and who is requesting permission to submit the application. To open an account, the proposed AOR must complete the profile information and create a Secret Question and Secret Answer at Grants.gov. An existing or legacy AOR can log into Grants.gov using his or her user name and password, update his or her profile, and create a Secret Question and Secret Answer. To register with Grants.gov, go to *https://apply07.grants.gov/apply/GrantsgovRegister*.

After the proposed AOR registers his or her user name and password with Grants.gov, the organization's E-Biz POC will be sent an e-mail indicating that someone has requested authority to submit an application for the organization and has registered as an AOR.

The final step in the registration process is when the E-Biz POC for the applicant organization identified in Box 8a of the SF–424, Application for Federal Assistance, actually grants authorization to the person identified as an AOR. (See Step Five below).

(5) *Step Five: Granting Approval of an AOR to Submit an Application on Behalf of the Organization*. The E-Biz POC must log into the Grants.gov Web site and give the registered AOR

approval to submit an application to Grants.gov. By authorizing the AOR to submit on behalf of the applicant organization, the E-Biz POC is stating that the person has the legal authority to submit the electronic application on behalf of the applicant organization and can make a legally binding commitment for the applicant organization.

(a) The E-Biz POC must approve the designated AOR(s). If the E-Biz POC does not grant authorization, Grants.gov will not accept the application. The E-Biz POC can designate the AOR to submit applications on behalf of the organization at *https://apply07.grants.gov/apply/AorMgrGetID*. The registration is complete when an AOR has been approved to submit an application on behalf of the applicant organization by the E-Biz POC.

HUD urges applicants to check with their E-Biz POC to make sure that they have been authorized to make a legally binding commitment for the applicant organization when submitting the application to Grants.gov. This is particularly important if, during the CCR registration renewal process, the E-Biz POC for the applicant organization has been changed. The new E-Biz POC will have to grant authorization to all AORs. You can search the CCR registration for the E-Biz POC by going to *https://www.bpn.gov/CCRSearch/Search.aspx*.

(b) AORs can track their AOR status at any time on Grants.gov by going to the Applicant home page at Grants.gov. In ''Quick Links,'' log in as an applicant and enter your user name and password. If you have not been granted AOR status by the E-Biz POC, you should contact the E-Biz POC directly.

5. *Instructions on How to Download an Application Package and Application Instructions.*

Please note:

The following instructions are not applicable to Continuum of Care applicants because Continuum of Care applications are not submitted to Grants.gov. A complete explanation on how to find and apply for Continuum of Care grants in 2009 will be provided in the Continuum of Care Program NOFA. HUD does provide notification of the availability of the registration instructions, applications, or other information through the Grants.gov Web site. Grants.gov no longer offers its notification service. Grants.gov now offers RSS Feed Services. Applicants are advised to sign up for one of the RSS Feed Services, which will allow an applicant to be notified of new funding opportunities or modifications to an existing funding opportunity. Information on RSS Feed options can be found at *http://www07.grants.gov/help/rss.jsp*. Applicants familiar with this technology may select any feed service listed on the Grants.gov site. However, to assist applicants with making a selection, HUD is offering these suggestions for one of the most popular services:

• *eMail with Microsoft Outlook Directions*

• Open your Web browser and go to *http://www.grants.gov*.

• In the upper right corner of the screen, select RSS.

• In the middle of the page, click on the hyperlink in ''Get an RSS Reader.''

• From the list of categories, select Windows.

• Select blogbot for Outlook.

• Select Download. A File Download dialog box will appear.

• Select Run. (If you see a Security Warning dialog box, select Run.)

• Run Setup Wizard accepting the default settings.

• When the Setup Wizard is finished, open Outlook.

• Look to see if a blogbot icon is visible in the tool bar area of Outlook. If not:

• Select View in the menu. Then select Toolbars. Click on blogbot. The blogbot icon should now be visible in your toolbars.

• To subscribe to Grants.gov, direct your browser back to the Grants.gov RSS page.

• Right-click on the orange icon next to *New/Modified Opportunities by Agency* or *New/Modified Opportunities by Category*.

• Select Add to blogbot for Outlook. For each subscription blogbot, add a subfolder in Inbox\blogbot.

• If the add blogbot for Outlook option does not appear, Select the feed to which you want to subscribe and copy the URL from the address box.

• From the blogbot toolbar icon, select Subscriptions.

• Paste the URL from Grants.gov into the RSS/Atom URL textbox.

• Create a name in the Name textbox.

• *Windows Environment Directions*

• Direct your web browser to *http://www.jetbrains.com*.

• Select Downloads at the top of the page.

• Select Omea Reader.

• A File Download dialog box will appear.

• Select Run. (If you see a Security Warning dialog box, select Run.)

• Accept the default settings in the Setup Wizard. Note: Omea installation may ask to reboot your computer. Accept the choice. When the reboot is complete, Omea Startup Wizard should open. If the Startup Wizard does not start automatically, double-click on the Omea icon on your desktop to start it.

• Accept all defaults in the Wizard.

• When the Wizard is finished, OMEA Reader will start.

• To view messages in groups, from the View menu, select Show Items in Groups.

• After you have turned this option on, all items in the Items List will be displayed in groups and sorted according to which resource column is selected.

• You can group your items by any column of the Items List.

• *MAC Users Directions*

• Direct Safari to *http://www.grants.gov*.

• In the upper right corner of the screen, select RSS.

• To view announcements in Safari, simply select one of the feed options, *e.g., New/Modified Opportunities by Agency* or *New/Modified Opportunities by Category*. The list of opportunities appears in Safari.

• In the column on the right side of the page, select Subscribe in Mail.

• Open Mail.

• You should now have a folder under RSS named Grants Modified Opportunities List.

• Filter the list by typing the Agency acronym or other term into the search box in the upper right corner.

Applicants that have not signed up for the RSS Feed notification service can search for a funding opportunity on Grants.gov by going to *http://www07.grants.gov/applicants/find_grant_opportunities.jsp*. On this page, you can do a basic search, browse by category, or browse by agency. If you are interested in HUD Grants, click on browse by agency and then scroll down the page until you see U.S. Department of Housing and Urban Development on the right column. When you click on the HUD agency name, you will come to a page with all the funding opportunities that are posted by HUD at that point in time. When you click on an opportunity, you will come to a page that provides a synopsis of the opportunity and which also identifies the Catalog of Federal Domestic Assistance (CFDA) Number for the Program, the Funding Opportunity Number and further down the page, a link to the full announcement. To download the application and instructions, follow the directions below, but first you must be sure you have Adobe Reader 8.1.3 installed. HUD's FY2009 applications use Adobe Reader.

a. *The Application Package and Application Instructions.* The general process for downloading, completing,

submitting, and tracking grant application packages is described at *http://www07.grants.gov/applicants/apply_for_grants.jsp*. To download the application and instructions, go to *https://apply.grants.gov/forms_apps_idx.html* and enter the CFDA Number, Funding Opportunity Number, or Funding Opportunity Competition ID for the application that you are interested in. If you enter more than one criterion, you will not find the instructions. You will then come to a page where you will find the funding opportunity *Download Application & Instructions* link. Before you can view and complete an application package, you must have a compatible Adobe Reader installed. Grants.gov is currently using Adobe Reader versions 8.1.2, 8.1.3, and 9.0. While the Grants.gov system supports all three versions of Adobe Reader, HUD applicants are advised they must download Adobe Reader 8.1.3 available from the Grants.gov Web site. HUD has been advised by Grants.gov that Adobe Reader 8.1.3 addresses the broken pipe error message and operates better than older versions of the reader, and the newer software results in faster uploads. Older versions, including Adobe Reader 9.0, do not solve the broken pipe issue. When Adobe Reader 9.1 is issued, it will address the broken pipe issue. To obtain Adobe 8.1.3 and check for compatibility with your system, go to *http://www.adobe.com/products/acrobat/readstep2_allversions.html*. At that site you can identify the software you have installed on your computer and follow the instructions for downloading the software compatible with your computer and associated to the instructions in this General Section for using Adobe Reader Version 8.1.3.

b. To check which version of Adobe Acrobat you are using, go to the Help menu in Adobe Acrobat and then select ''About Acrobat.'' A text box will appear containing an Adobe logo with a number. Under that information, you will see another number; this is the version number of your software (*e.g.*, 8.1.1, 8.1.2, or 8.1.3). If you do not have the correct version of Adobe Reader, go to *http://www.adobe.com/products/acrobat/readstep2_allversions.html*. System requirements for Adobe Reader 8.1.3 are listed as follows:

6. *Adobe Reader 8.1.3 System Requirements*.

- Windows
- Intel Pentium® III or equivalent processor
- Microsoft Windows 2000 with Service Pack 4; Windows Server 2003; Windows XP Professional, Home Edition, or Tablet PC Edition with Service Pack 2 or 3; Windows Vista with or without Service Pack 1.
- 128MB of RAM (256MB recommended for complex forms or large documents).
- 170MB of available hard-disk space.
- Microsoft Internet Explorer 6.0 or 7.0, Firefox 1.5 or 2.0, Mozilla 1.7, AOL 9.
- Macintosh
- PowerPC G3, G4, G5, or Intel processor.
- Mac OS X v10.4.11–10.5.5.
- 128MB of RAM (256MB recommended for complex forms or large documents).
- 170MB of available hard-disk space.
- Safari 2.0.2.
- Linux
- 32-bit Intel Pentium processor or equivalent.
- LSB (Linux Standard Base) 3.1 compliant systems including Red Hat® Linux WS 5, SUSE® Linux Enterprise Desktop (SLED) 10, and Ubuntu 6.10.
- GNOME or KDE Desktop Environment.
- 512MB of RAM (1GB recommended).
- 125MB of available hard-disk space (additional 75MB required for all supported font packs).
- GTK+ (GIMP Toolkit) user interface library, version 2.6 or later.
- Firefox 1.5 or later, Mozilla 1.7.3 or later.
- Solaris
- UltraSPARC® or UltraSPARC IIIi® processor.
- Solaris 9 or 10.
- GNOME or KDE Desktop Environment (GNOME only for Solaris 10).
- 512MB of RAM (1GB recommended).
- 175MB of available hard-disk space (additional 75MB required for all supported font packs).
- GNU C library (glibc) version 2.3 or later.
- GTK+ (GIMP Toolkit) user interface library, version 2.6 or later (on Solaris 10; also works with GTK 2.4.9).
- Firefox 1.5 or later, Mozilla 1.7.3 or later.
- OpenGL library.
- OpenSSL 0.9.7, OpenLDAP, and CUPS libraries.
- libstdc++ library.

a. You can use Adobe Reader 8.1.3 with Adobe Professional 6.0 or newer, provided you have updated the default setting on the copy of Adobe Professional on your computer so the Adobe Reader default setting matches Adobe Reader 8.1.3, which you have just downloaded from the Grants.gov Web site and installed on your computer.

b. Grants.gov has posted instructions in Frequently Asked Questions at *http://grants.gov/applicants/applicant_faqs.jsp*. Applicants should review these FAQs as it will assist them in making sure that they are properly set up to successfully submit an application. Applicants need to make sure that the default setting on their Adobe Reader is set to the new 8.1.3 version of Adobe Reader software downloaded from Grants.gov. Adobe Reader 8.1.3 is compatible with Adobe Professional 6.0 or higher. Applicants that need assistance can contact the Grants.gov Contact Center by phone at 1–800–518–GRANTS or via e-mail at *support@grants.gov*.

Critical Notice: Applicants must be aware that all persons working on Adobe Forms in the application package must work using the same Adobe Reader version available from Grants.gov. Please alert your staff and those working on your application that failure to download and use the correct Adobe Reader 8.1.3 or to update the Reader on Adobe Professional to 8.1.3 and meet the Grants.gov compatibility requirements contained in this General Section will result in your not being able to create or submit the application package to Grants.gov or your application being rejected by Grants.gov. Using incompatible versions of Adobe Reader will result in files being corrupted.

Next, download the application instructions by clicking on the Download Instructions link. The Instructions contain the General and Program Sections for the funding opportunity, as well as forms that are not part of the application download but are included as elements of a complete package, as specified in the published NOFA. After you have installed Adobe Reader 8.1.3, you can now download the application by clicking on the Download Application link. Both the instructions and application should be saved on your computer. You do not need to be registered to download the instructions or complete the application; however, once you have downloaded the application and intend to submit an application, you must save it on your computer or local network drive.

Each program NOFA also includes a checklist. Please review the checklist in the Program Section to ensure that your application contains all the required materials.

c. *Electronic Grant Application Forms*.

(1) Forms contained in the Instructions download are available in Microsoft Office Word 2003 (.doc),

Microsoft Office Excel 2003 (.xls), or Adobe (.pdf) formats. The .pdf files are only fillable forms and cannot be saved locally, unless you have Adobe Professional software version 6.0 or higher.

(2) To open the Application download, you must first install Adobe Reader 8.1.3. During the download process, the application automatically opens. If you have a version of Adobe Acrobat or Adobe Acrobat reader version 8.0 or older, the application will not open, and you will get an error message telling you to first install the correct version of the software. If you get an error message, follow the instructions in paragraph IV.B.5., Instructions on How to Download an Application Package and Application Instructions. The Application download will contain a cover page entitled ''Grant Application Package.'' The cover page provides information regarding the application package you have chosen to download, i.e., Opportunity Title, Agency Name, CFDA Number, etc. Review this information to ensure that you have selected the correct application. The Grant Application cover page separates the required forms into two categories: ''Mandatory Documents'' and ''Optional Documents.'' To complete a form from either the ''Mandatory Documents'' or Optional Documents,'' you must first highlight and move the form over to the ''Submission'' box and then open the form.

(3) Please note that regardless of the box in which the forms are listed, the published General Section and Program Section NOFA (and any technical corrections) in the **Federal Register** documents are the official documents HUD uses to solicit applications. Therefore, applicants should follow the instructions provided in the General Section and Program Sections of the Instructions download. The individual NOFA sections will also identify the forms that may be applicable and that need to be submitted with the application.

(4) Because you will be adding additional attachment files to the downloaded application, applicants should save the application to their local computer or network drive. Do not download the application or attempt to upload the application using a USB flash drive (also called a ''key drive,'' ''thumb,'' or ''jump drive''), because Grants.gov has found that applicants have problems uploading applications and attachments from a USB flash drive. Be sure to read and follow the application submission requirements published in each individual NOFA for which you are submitting an application. Each program NOFA will identify all the required forms and other required information for submission.

(5) HUD's standard forms are identified below:

(a) Application for Federal Assistance (SF–424);

(b) Faith-Based EEO Survey (SF–424 Supplement, Survey on Ensuring Equal Opportunities for Applicants), if applicable;

(c) HUD Detailed Budget (HUD–424–CB, Grant Application Detailed Budget);

(d) Grant Application Detailed Budget Worksheet (HUD–424–CBW);

(e) Disclosure of Lobbying Activities (SF–LLL), if applicable;

(f) HUD Applicant Recipient Disclosure Report (HUD–2880, Applicant/Recipient Disclosure/Update Report);

(g) Certification of Consistency with RC/EZ/EC–II Strategic Plan (HUD–2990), if applicable;

(h) Certification of Consistency with the Consolidated Plan (HUD–2991), if applicable;

(i) Acknowledgment of Application Receipt (HUD–2993);

(j) You Are Our Client Grant Applicant Survey! (HUD 2994–A) (Optional);

(k) Program Outcome Logic Model (HUD–96010);

(l) HUD Race Ethnic Form (HUD–27061), if applicable; and

(m) HUD Facsimile Transmittal (HUD–96011, Third Party Documentation Facsimile Transmittal).

All HUD ''program-specific'' forms not available at the Application download will be available in the Instructions download in Microsoft Word Office 2003 (.doc), Microsoft Excel Office 2003 (.xls), or Adobe (.pdf) format, compatible with Adobe Reader 8.1.3. The PDF forms are fillable but not savable, unless you have Adobe Professional 6.0 or higher. Applicants may use the HUD–96011, ''Third Party Documentation Facsimile Transmittal'' (''HUD Facsimile Transmittal'' on Grants.gov) form and fax to HUD any forms they have completed but cannot save.

7. *Instructions on How to Complete the Selected Grant Application Package.*

a. *Ensure You Have the Correct Application Downloaded.* Applicants must check the application to ensure that the application they have downloaded matches the CFDA Number, Funding Opportunity Number, and Competition ID for the funding opportunity under which the applicant is requesting funds. In FY2009, if HUD receives an application submitted under the wrong application package, HUD will rate the application under the funding competition ID on the SF–424 for the submitted application. Please pay careful attention to which application you submit. The CFDA number, Funding Opportunity Number, and Competition ID are located on the front page of the downloaded application. If you download the wrong application, and it is prior to the deadline date, simply go back to Grants.gov and obtain the correct application and resubmit.

b. *Mandatory Fields on Application Download Forms.* Forms in the Application download contain fields with a yellow background. These data fields are mandatory and must be completed. Failure to complete the fields will result in an error message when checking the package for errors.

c. *Completion of SF–424 Fields First.* The forms in the application package are designed to automatically populate common data such as the applicant name and address, DUNS number, etc. In order to trigger this function, the SF–424 must be completed first. Once applicants complete the SF–424, the entered information will transfer to the other forms.

d. *Submission of Narrative Statements, Third-Party Letters, Certifications, and Program-Specific Forms.* In addition to program-specific forms, many of the NOFAs require the submission of other documentation, such as third-party letters, certifications, or program narrative statements. This section discusses how you should submit this additional information electronically as part of your application:

(1) *Narrative Statements to the Factors for Award.* If you are required to submit narrative statements, you must submit them as an electronic file in Microsoft Word Office 2007 (or earlier) (.doc), Microsoft Excel 2007 (or earlier) (.xls), or in Adobe (.pdf) format that is compatible with Adobe Reader 8.1.3. If HUD receives a file in a format or software other than those specified or that is not compatible with HUD software, HUD will not be able to read the file, and it will not be reviewed. Each response to a Factor for Award should be clearly identified and can be incorporated into a single attachment or all attachments can be zipped together into a single attached ZIP file. However, HUD advises applicants that files zipped within zipped files cause problems and can result in the application attachments not able to be opened or read. Applicants should develop files, then zip the files together, and then place them as an attachment to the application. If you have any

questions, you can contact the NOFA Information Center or the HUD program contact listed in the program NOFA. Documents that applicants possess in electronic format, *e.g.*, narratives they have written, must be submitted as Microsoft documents; graphic images (such as computer aided design (CAD) files from an architect) must be saved in PDF format. The documents must be compatible with Adobe Reader 8.1.3 and attached using the ''Attachments'' form included in the application package downloaded from Grants.gov. In addition, some NOFAs may request photographs. If this is the case, then the photographs should be saved in .jpg or .jpeg format and attached using the ''Attachments'' form. When creating attachments to your application, please follow these rules:

(a) Do not attach a copy of the electronic application with your attachments as an attachment file. HUD cannot open such files when the application is attached as an attachment file.

(b) Check the attachment file and make sure it has a file extension of .doc, .pdf, .xls, .jpg, or .jpeg or, if you save files in Microsoft Office 2007, the file extensions should be as follows:

Word 2007 File Type Extension

- docx—*Word* 2007 XML Document

Excel 2007 File Type Extension

- xlsx—*Excel* 2007 XML Workbook

PowerPoint 2007 File Extension Type

- pptx—PowerPoint 2007

(c) Make sure that file extensions are not in upper case. File extensions must be lower case for the file to be opened. The software will automatically insert the correct file extension when saved.

(d) Do not adjust file extensions to try to make them conform to HUD standards. If you have problems, please contact the HUD contact listed in the NOFA.

(e) Do not use special characters (*i.e.*, #, %, /, etc.) in a file name.

(f) Do not include spaces in the file name.

(g) Limit file names to not more than 50 characters. HUD recommends that file names be no more than 32 characters.

(h) Do not convert Word files or Excel files into PDF format. Converting to PDF format increases file size and will make it more difficult to upload the application and does not allow HUD to enter data from the Excel files into a database.

(i) Do not submit applications larger than 150 megabytes. These file sizes are difficult to upload and HUD cannot guarantee that they can be processed, as its system has not been tested with files larger than 150 megabytes.

Failure to follow the directions for items (e), (f), and (g) will result in your application being rejected with a ''VirusDetect'' error message.

(2) ZIP Files. In order to reduce the size of attachments, applicants can compress several files using a ZIP utility. Applicants can then attach the zipped file as described above. HUD's standard zip utility is WinZip. Files compressed with the WinZip utility must use either the ''Normal'' option or ''Maximum (portable)'' option available to ensure that HUD is able to open the file. Files received using compression methods other than ''Normal'' or ''Maximum (portable)'' cannot be opened and will not be reviewed. Applicants should be aware that if HUD receives files compressed using another utility, or not in accord with these directions, it cannot open the files and, therefore, such files will not be reviewed.

(3) *Third-Party Letters, Certifications Requiring Signatures, and Other Documentation.* Applicants required to submit third-party documentation (*e.g.*, establishing matching or leveraged funds, documentation of 501(c)(3) status or incorporation papers, documents that support the need for the program, Memorandums of Understanding (MOUs), or program-required documentation that supports your organization's claims regarding work that has been done to remove regulatory barriers to affordable housing) can choose from the following two options as a way to provide HUD with the documentation:

(a) Scanning Documents to Create Electronic Files. Scanning documents increases the size of files. If your computer has the memory and capacity to upload scanned documents, submit your documents with the application by using the Attachments form in the Mandatory or Optional Forms section of the application. If your computer does not have the memory to upload scanned documents, you should submit them via fax, as described below. Electronic files must be labeled so that the recipient at HUD will know what the file contains. Program NOFAs will indicate any naming conventions that applicants must use when submitting files using the Attachments form. Please note that if you do not follow the file name limit of not more than 50 characters, and the prohibition of using spaces and special characters in the file name, the Grants.gov system will treat these files as though they had a virus and the application will be rejected with a ''VirusDetect'' error message. If an applicant received a ''VirusDetect'' error message and the package has been checked for viruses, applicants should check their attachment file names for length, delete any spaces, and delete any special characters. HUD also recommends that file names be no more than 32 characters. Once the deficiencies have been addressed, applicants should save the application file, and the newly renamed attachments, and close the application down. Remove any cookies, reboot your computer, and then submit the application. Grants.gov advises submitting the application from Internet Explorer.

(b) Faxing Required Documentation. Applicants may fax the required documentation as program-specific forms to HUD. Applicants should use this method only when documents cannot be attached to the electronic application package as a .pdf, .doc, .xls, .jpeg, or .jpg, or when the size of the submission is too large to upload from the applicant's computer. If an applicant is trying to submit the application including scanned documents, and the application does not upload quickly to Grants.gov, HUD advises the applicant to either reconvert the scanned documents back to Microsoft Word or Excel files or send the attachments in using the fax methodology, because size of the scanned attachment files may be exceeding the capacity of your computer or your internet server to process the files and obtain a successful upload to Grants.gov.

HUD will not accept entire applications by fax and will disqualify applications submitted entirely in that manner.

(i) Fax form HUD–96011, ''Third Party Documentation Facsimile Transmittal'' (HUD Facsimile Transmittal on Grants.gov). Facsimiles submitted in response to a NOFA must use the form HUD–96011. The facsimile transmittal form, found in the downloaded application, contains a unique identifier that allows HUD to match an applicant's submitted application via Grants.gov with faxes coming from a variety of sources. Each time the application package is downloaded, the forms in the package are given a unique ID number. To ensure that all the forms in your package contain the same unique ID number, after downloading your application, complete the SF–424, save the forms to your hard drive, and use the saved forms to create your application. When you have downloaded your application package from Grants.gov, be sure to first complete the SF–424, and then provide

copies of the form HUD–96011 to third parties that will submit information in support of your application. Do not download the same application package from Grants.gov more than once, because if your application submission does not match the unique identifier on the facsimile transmittal form, HUD will not be able to match the faxes received to your application submission. Faxes that cannot be matched to an application will not be considered in the review process.

If you have to provide a copy of the form HUD–96011 to another party that will be responsible for faxing an item as part of your application, make a copy of the facsimile transmittal cover page from your downloaded application and provide that copy to the third party for use with the fax transmission. Please instruct third parties to use the form HUD–96011 that you have provided as a cover page when they submit information supporting your application using the facsimile method, because it contains the embedded ID number that is unique to your application submission.

(ii) Use Form HUD–96011 as the Fax Cover Page. For HUD to correctly match a fax to a particular application, the applicant must use, and require third parties that fax documentation on its behalf to use, the form HUD–96011 as the cover page of the facsimile. Using the form HUD–96011 will ensure that HUD can electronically read faxes submitted by and on behalf of an applicant and can match them to the applicant's application package received via Grants.gov.

Failure to use the form HUD–96011 as the cover page will create a problem in electronically matching your faxes to the application. If HUD is unable to match the faxes electronically due to an applicant's failure to follow these directions, HUD will not hand-match faxes to applications and will not consider the faxed information in rating the application. If your facsimile machine automatically creates a cover page, turn this feature off before faxing information to HUD.

(iii) HUD Fax Number. Applicants and third parties submitting information on their behalf must use the form HUD–96011 facsimile transmittal cover page and must send the information to the following toll-free fax number: 800–HUD–1010. If you cannot access the toll-free 800 number or experience problems, you may use 215–825–8798 (this is not a toll-free number). These are new numbers for FY2009 applications only. If you use the wrong fax number, your fax will be entered as part of HUD's FY2008 database. HUD cannot search its FY2008 database to match FY2009 faxes to FY2009 applications. As a result, your application will be reviewed without faxed information if you fail to use the FY2009 fax numbers.

(iv) Fax Individual Documents as Separate Transmissions. It is highly recommended that applicants fax individual documents as separate submissions to avoid fax transmission problems. When faxing two or more documents to HUD, applicants must use the form HUD–96011 as the cover page for each document (*e.g.*, Letter of Matching or Leveraging Funds, Memorandum of Understanding, Certification of Consistency with the Consolidated Plan, etc.). Please be aware that faxing large documents at one time may result in transmission failures.

(v) Check Accuracy of Fax Transmission. Be sure to check the record of your transmission issued by the fax machine to ensure that your fax submission was completed ''OK.'' For large or long documents, HUD suggests that you divide them into smaller sections for faxing purposes. Each time you fax a document that you have divided into smaller sections, you should indicate on the cover sheet what part of the overall section you are submitting (*e.g.*, ''part 1 of 4 parts'' or ''pages 1 to 10 of 20 pages'').

Your facsimile machine should provide you with a record of whether HUD received your transmission. If you get a negative response or a transmission error, you should resubmit the document until you confirm that HUD has received your transmission. HUD will not acknowledge that it received a fax successfully. When receiving a fax electronically, HUD will electronically read it with an optical character reader and attach it to the application submitted through Grants.gov. Applicants and third parties submitting information on their behalf may submit information by facsimile at any time before the application deadline date. Applicants must ensure that the form HUD–96011 used to fax information is part of the application package downloaded from Grants.gov. As stated previously, if your facsimile machine automatically generates a cover page, you must ensure that you turn that feature off and use the form HUD–96011 as the cover page. Also ensure that the fax is transmitted to fit 8½″ x 11″ letter-size paper.

(vi) Preview Your Fax Transmission. HUD recommends that you ''preview'' how your fax will be transmitted by using the copy feature on your facsimile machine to make a copy of the first two or three pages. This way, you will see what HUD will receive as a fax. If the fax is not clear or cuts off at the bottom of the page, applicants should use a different facsimile machine or have the machine adjusted. All faxed materials must be received no later than 11:59:59 p.m. eastern time on the application deadline date. HUD will store the information and match it to the electronic application when HUD receives it from Grants.gov. If you are not faxing any documents, you must still complete the facsimile transmittal form. In the section of the form titled ''Name of Document Transmitting,'' enter the words ''Nothing Faxed with this Application.'' Complete the remaining highlighted fields and enter the number ''0'' in the section of the form titled ''How many pages (including cover) are being faxed?''

(vii) If You Resubmit an Application. Please be aware that a resubmitted application must meet the timely receipt requirements of this notice.

8. *Steps To Take Before You Submit Your Application.* Approximately one week before submitting an application, each applicant should configure its proxy and cache servers to ensure transmission of its application to Grants.gov. Grants.gov uses HTTP post protocols on port 80 (your technical support will be able to assist). Prior to submitting, applicants should review the application package and all the attachments to make sure the application contains all the documents the applicant wants to submit. If it does, save it to your computer and remove previously saved versions. Check your AOR status on Grants.gov to make sure your eBusiness POC has authorized you to submit an application on behalf of the applicant organization. Run the Check Package for Errors feature on the application package and correct any problems identified. Contact any persons or entities that were to submit third-party faxes to make sure that the faxes have been submitted using the facsimile cover page that you provided in accordance with instructions in this General Section. Check your e-mail system to ensure that it allows receipt of messages from *Support@grants.gov*. Microsoft Outlook users can set their e-mail to receive messages from *Support@grants.gov* going to their e-mail Inbox, clicking on ''Actions'' and selecting ''Junk E-mail'', and then selecting ''Junk E-mail Options.'' A dialog box will come up. Click ''OK.'' Another dialog box will appear and select the ''Safe Senders'' folder. Then add @grants.gov to the list of acceptable e-mail domains. Click ''OK.'' Applicants not using Microsoft Outlook should check with their software provider or IT staff to get directions on how to allow

e-mail from Grants.gov to come into your Inbox. This is critical as notices of receipt, validation, or rejection are sent by e-mail. Grants.gov sends the e-mail notification to the e-mail address registered during the registration process. The e-mail from Grants.gov does not go to the contact name listed on the SF–424 Application for Federal Assistance, but to the person designated in the registration at Grants.gov. Also check your Trust Manager to ensure that it will allow files to go to all sites. To enable Trust Manager, follow the steps below:

a. Click on Edit;

b. Then click on Preferences;

c. Then click Trust Manager in the left-hand pane;

d. Click on Change Settings on the ensuing window;

e. Select allow all sites listed toward the top of the page;

f. Click on OK;

g. Click on JavaScript on the left-hand side of the screen;

h. Make sure everything is checked here except for things under the Debugger heading (do not change);

i. Click on OK until you get out of the preferences windows;

j. When this has been done, you can try submitting your application. Click ''Allow'' on the pop-up window.

C. Receipt Dates and Times

Please note: Applicants under the Continuum of Care program should follow the directions for application submission and timely receipt that are contained in the Continuum of Care program NOFA. The instructions below apply only to applicants submitting applications via the federal portal *http://www.Grants.gov*.

1. The application deadline for receipt of HUD applications via Grants.gov is 11:59:59 p.m. on the date identified in the published program NOFA. As a result, applications must be received by Grants.gov by the deadline in order to meet the program NOFA deadline. Received means that the application has been successfully uploaded to the Grants.gov server and the applicant has received confirmation of successful submission to Grants.gov. Applicants should be aware that hitting the ''sign and submit'' button to transmit the application does not mean the application has been successfully uploaded to Grants.gov. Only when the upload is complete is the application date and time stamped by the Grants.gov system. An application that has been rejected by Grants.gov is not deemed to have been received by Grants.gov. (Please see Section D.1. below for a detailed explanation of Timely Receipt Requirements and Proof of Timely Receipt.) As in the past, HUD encourages applicants to submit their applications early and with sufficient time to address any issues that might affect the applicant's ability to have an application successfully uploaded and received by Grants.gov.

In FY 2009, HUD is establishing a one-day grace period from the date of notification of a rejection from Grants.gov, to allow applicants that successfully upload an application to Grants.gov prior to the deadline date and time, but receive a rejection notice after the deadline date and time, to cure the reason for rejection and re-upload the application to Grants.gov. The paragraphs below describe HUD's Grace Period Policy for FY2009.

a. Applicants that have successfully uploaded their application to Grants.gov prior to the deadline, and subsequently receive a rejection notice from Grants.gov after the deadline date and time, will have a one-day grace period from the date stamp on the first Grants.gov rejection notice after the deadline, to cure the basis for the rejection and upload an application that corrects the problems cited in the rejection notice. Applicants can upload the application as many times as needed to cure noted deficiencies within the one-day grace period. The Grants.gov rejection notice identifies the reasons why the application was rejected. Applicants that do not understand the error messages received in the rejection notice should immediately contact the Grants.gov Help Desk so they can get assistance in clearing the problem. Generally, Grants.gov will reject an application because it contains an incorrect DUNS number or a DUNS number that does not match the AOR's registration, the application was submitted by an individual without proper authorization as the AOR, and/or the application contains file names that trigger a ''VirusDetect'' message. The grace period ends one day after the date stamp on the first rejection notice received after the deadline date.

Warning: Applications that contain file names which are longer than 50 characters (HUD recommends using file names with 32 characters or less), or contain spaces or special characters, will result in the file being detected as a virus by the Grants.gov system and the application will be rejected with a ''VirusDetect'' message. In FY2008, the use of spaces and special characters in file names, and the use of file names which were longer than fifty characters, resulted in the most instances of an applicant receiving a ''VirusDetect'' rejection. Applicants should also scan files for viruses because the Grants.gov system will also reject files with viruses.

Applications received by Grants.gov, including those received during the grace period, must be validated by Grants.gov to be rated or ranked or receive funding consideration by HUD. HUD will use the date and time stamp on the Grants.gov system to determine dates when the grace period begins and ends.

b. Applications uploaded to Grants.gov after the deadline date under the following circumstances do not qualify for the grace period and will not be considered for funding:

(1) Applications uploaded and received by Grants.gov after the deadline date and time for which there is no prior rejection notice in the Grants.gov system logs will be considered late and will not be rated and ranked or receive funding consideration. Failure to successfully upload the application to Grants.gov by the deadline date and time does not qualify for the grace period as described above.

(2) Applications receiving a rejection notice due to the funding opportunity being closed will not be provided the one day grace period to correct the ''opportunity closed'' deficiency or any other basis for rejection because the applicant missed the deadline date and time and therefore does not qualify for the grace period as described above.

(3) If an application is uploaded during the grace period and is subsequently rejected after the grace period ends, the applicant will not be afforded additional time to correct the deficiency(ies) noted in the rejection notice.

c. The grace period ends at 11:59:59 p.m. one day from the date stamp on the first rejection notice issued by the Grants.gov system to the e-mail address provided in the Grants.gov registration. Applicants must ensure that their e-mail notification address contained in the Grants.gov registration is up-to-date. Neither HUD nor Grants.gov will be responsible if e-mail messages are not received at the address listed in the registration process. Applicants must also ensure that their e-mail systems will accept messages from Grants.gov. Applicants are responsible for monitoring their e-mail messages. Messages from Grants.gov come from *Support@grants.gov*.

d. The only exceptions to HUD's grace period policy are:

(1) The Grants.gov system is down and not available to applicants for at least 24 hours prior to the deadline date, or the system is down for 24 hours or longer, impacting the ability of

applicants to cure a submission deficiency within the grace period; and/or

(2) There is a presidentially declared disaster in the applicant's area. In the event of either or both of these events, HUD will publish a notice extending the deadline or cure period, for applicants affected, as appropriate.

e. Busy servers or slow processing are not the basis for HUD to extend the deadline dates or the grace period.

Applicants are advised to monitor the Grants.gov system using the Grants.gov blog at *http://grants-gov.blogspot.com/*. The Grants.gov blog provides information on server capacity, traffic on the Grants.gov site, and other federal grant closings each day. Applicants should monitor the site and take into account the amount of traffic on the site when applying.

2. An applicant will not be provided additional opportunities to correct rejection errors if an application is rejected after the one-day grace period has expired.

As with any electronic system, applicants may experience issues when attempting to submit their application which does not permit the uploading of the application to Grants.gov. Such issues can be due to firewall and virus protection software that the applicant has placed on their system or network; proxy and cache settings; Internet traffic; limitation on the size of the files attempting to be transmitted established at the applicant's site or by the applicant's Internet provider; Grants.gov servers experiencing busy traffic; or any number of issues. Therefore, HUD strongly advises applicants to submit their applications at least 48 hours prior to the deadline and when the Grants.gov Help Desk is open so that assistance can be provided. Assistance may require diagnosing an applicant's particular issues. An applicant that does not follow HUD's advice increases the applicant's risk of not being able to meet the timely receipt requirements. A submission attempt less than the recommended 48 hours before the deadline does not allow the time needed to research the reason for the problem or to work with the applicant in overcoming the uploading difficulty. Similarly, attempting to submit within 24 hours of the deadline or when the Grants.gov Help Desk is closed does not allow the time needed for Grants.gov or HUD to provide the needed assistance. In addition, HUD staff cannot provide assistance or contact Grants.gov on your behalf after the Help Desk is closed.

3. *Grants.gov Application Processing Steps and Notifications.*

After successful upload of an application to Grants.gov, the following processes will occur:

a. *Confirmation of Submission to Grants.gov.* When an application is successfully uploaded to Grants.gov, the AOR submitting the application will receive a confirmation screen on his or her computer that informs the submitter that the application has been successfully uploaded to Grants.gov and is being processed. This confirmation will include a tracking number. Print this confirmation out and save it for your records. If you submitted multiple applications, check your confirmation for each application submitted. The tracking number, CFDA Number, and Funding Opportunity Number, as well as the date and time of submission will appear on the confirmation. If you do not receive this confirmation, it usually means that your application has not been successfully uploaded. If your screen goes blank or you have problems uploading or your computer is not saving files, it usually means that your computer does not have sufficient memory or processing capability to store and upload the application. If you experience these difficulties, you should go to *http://www.grants.gov* and log in using your user name and password, and then click on ''Check Application Status.'' If your application does not appear, you should immediately call Grants.gov support at 800–518–GRANTS for assistance (this is a toll-free number). If the Help Desk is closed, you should try reducing the size of your application or temporarily taking files off your computer to reduce the demand on your system. The files that were removed can be placed back on your system after uploading the application. (See information on Adobe Version 8.1.3 system requirements contained in section IV.B.6 of this General Section.) HUD also recommends checking to ensure that the applicant's firewalls and anti-virus software allows access to the Grants.gov system.

b. *Application Submission Validation Check.* The application will then go through a validation process. The validation check ensures that:

(1) The application is virus free (this includes that the file names comply with the required size limits and spacing and special characters limitations);

(2) The application meets the deadline requirements established for the funding opportunity (this includes the grace period and conditions cited earlier in this notice);

(3) The DUNS number submitted on the application matches the DUNS number in the registration, and that the AOR has been authorized to submit the application for funding by the organization identified by its DUNS number;

(4) The AOR has been authorized by the applicant's E-Biz POC to submit the application;

(5) All the mandatory (highlighted) fields and forms were completed on the application; and

(6) The correct version of Adobe Reader was used in completing the application package forms.

c. *Application Validation and Rejection Notification.* If the application fails any of the above items during the validation check, the grant application will be rejected and Grants.gov will send an e-mail to the person denoted by the applicant in the registration process to receive e-mail notifications from Grants.gov. The e-mail will indicate that the grant application has been rejected. The e-mail will also include the reasons why the application was rejected. The e-mail will come from Support@Grants.gov. The validation check can occur 24 to 48 hours after the application submission.

d. *Applicants receiving a rejection notice have the opportunity to cure the rejection under the terms and provisions listed under HUD's grace period policy.*

4. *Receipt Dates and Times.*

a. *Timely Receipt Requirements and Proof of Timely Submission.*

(1) *Proof of Application Receipt.* Receipt times and rejection notifications are automatically recorded by Grants.gov. An electronic time stamp is generated within the system when the application has been successfully received, the application has been validated, or when an application has been rejected. HUD will use these date stamps to determine whether an application meets the timely receipt requirements.

(2) *Confirmation Receipt.* Upon submitting an application at Grants.gov, the person submitting the application will see a confirmation screen appear on their computer. The confirmation advises the submitter that the application has been successfully uploaded to Grants.gov. This confirmation will also include the Grants.gov tracking number. Print the confirmation and save it with your records. If you do not receive the Confirmation screen, go to *http://www.Grants.gov*, and using the AOR user name and password, click on ''Check Application Status.'' If there is no data to display for the submitted application, the application was not successfully uploaded and not received by Grants.gov.

(3) *Grants.gov Receipt E-mail.* Shortly after displaying the successful submission Confirmation screen, Grants.gov will send a Receipt Notice to the e-mail address listed in the registration. The Receipt Notice will identify the application submitted and the date and time it was received by Grants.gov. HUD will use this date and time stamp to determine if the application was received by Grants.gov in accord with the timely submission requirements in this notice. The Receipt Notice merely acknowledges that an application was received. The next step in the process is the validation of the registration information against the DUNS number information and the applicant electronic signature in the application submitted to Grants.gov; and a check to see that there are no viruses in the application or that the attachment files met the file-naming conventions contained in this notice so as to be compatible with the Grants.gov system.

(4) *Validation Receipt via E-mail.* Within 24 to 48 hours after receiving the Receipt Notice e-mail, the applicant will receive a validation receipt or rejection notice via e-mail. The validation receipt indicates that the application has passed the validation review at Grants.gov and that the application is ready to be retrieved by the grantor agency for agency processing. Please be aware that the Grants.gov validation does not indicate that the grantor agency has reviewed the content of your application; rather, the validation merely indicates that the application has been successfully received and is ready for pickup by the grantor agency.

(5) *Rejection Notice.* If an application fails the validation process, the applicant is sent a rejection notice within 24 to 48 hours after the notification of receipt by Grants.gov. The e-mail notification will be sent to the e-mail address registered in the Grants.gov system to receive e-mail notifications. The applicant should review the rejection notice because it will include the reason(s) for rejection. If the rejection notice is received prior to the deadline date, the AOR should try to cure the deficiencies identified and resubmit the application as soon as possible prior to the deadline. If the rejection notice is received after the deadline date, the AOR should try to cure the deficiencies identified and resubmit the application prior to the end of the grace period. The most common rejection notices are:

(a) Invalid DUNS.

''The DUNS number entered in your package is invalid or does not match the DUNS number that is registered with the Central Contractor Registry (CCR). Please verify that the DUNS number is entered correctly, and is the same as in your Central Contractor Registry (CCR) registration.''

(b) Password ID.

If the submitter submits using a password not associated with the User ID or if the submitter forgets or confuses the password, the submitter will not be able to log onto Grants.gov. Attempts to log on using the wrong password/ID combination will result in a pop-up JAVA Script Window with a Warning Notice. The notice states ''Grants.gov cannot log you in with the provided credentials. You have made 1 of 3 allowed failed logins. Please verify your user name and password and attempt to login again.'' Applicants can get their password reset by going to their credential provider, obtaining a new password, registering that password at Grants.gov and having the E-Biz Point of Contact authorize the submitter as an AOR to submit the application under the applicant DUNS number using the registered credentials.

(c) Not Authorized.

(i) A User that uses a User ID/Password combination that is registered but has not been authorized by the applicant's E-Biz POC will receive a rejection message that states, ''You are not designated by your organization to be an Authorized Organizational Representative and your application cannot be validated. You either have not successfully completed the registration process or your E-Biz POC has not authorized you to submit on behalf of your organization.'' To verify whether you have been successfully registered with Grants.gov, click *https://apply07.grants.gov/apply/ApplicantLoginGetID*. To check to see if you have been designated by the E-Biz POC as an AOR, go to *http://www.grants.gov/applicants/org_step6.jsp*.

(ii) Applicants that may have an authorized user name/password but who enter the DUNS number incorrectly, or who use a DUNS number that they have not been authorized to use, will receive the ''NOT AUTHORIZED'' rejection in combination with the invalid DUNS message.

(iii) Individuals who attempt to apply for a grant for which individuals are not an eligible applicant, will receive the Not Authorized and Invalid DUNS rejection notices, plus a third rejection notice that states: ''The grant opportunity for which you have applied is designated for Authorized Organization Representatives (AOR) only. However, your application or a grant/grants was not submitted on behalf of a company, organization, institution, or government. An AOR submits a grant on behalf of a company, organization, institution, or government. AORS have the authority to sign grant applications and the required certifications and/or assurances that are necessary to fulfill the requirements of the application process.''

(d) VirusDetect.

A VirusDetect rejection message can be received if the application contains a virus or if the application submission contains files which do not meet the file-naming conventions stated in this notice.

(6) *Most Common Reasons for Rejection.* HUD has found that the most common reason for rejection of an application by Grants.gov was the failure of the applicant to be authorized by their E-Biz POC to submit the application on behalf of the applicant organization. Fifty-nine percent of the rejection notices contained the unauthorized notice alone, indicating that they had used the correct DUNS number but had not completed all the steps in the registration process. The second-most common error was the use of spaces, special characters and file names longer than fifty characters in an attachment file name. Use of spaces, special characters, or file names that are longer than fifty characters will result in a ''VirusDetect'' error. Twenty-three percent of the rejections were due to ''VirusDetect'' errors. The third-most common error was not submitting the application using the correct DUNS number associated to the applicant organization for which the applicant was the authorized AOR. Six percent of the rejected applications failed validation for using a DUNS number that did not match the information in the Grants.gov registration. Use of a DUNS number that does not match the registration information results in three error messages.

(7) *Save and File Receipts.* Applicants should save all receipts from Grants.gov, as well as facsimile receipts, for proof of timely submission. Applicants will be considered meeting the timely submission requirements based upon the requirements in section IV.C., Receipt Dates and Times, and when all fax transmissions have been received by 11:59:59 p.m. on the deadline date stated in the program NOFA.

(8) *Checking the Status of Your Application Online.* Grants.gov allows applicants to check the status of their application online. To check your application status, log on at *http://www.grants.gov* and click on Applicant Login, and then enter your user name

and password. Next, click on ''Check Application Status.'' All applications submitted by the applicant with the user name and password entered in the login screen will be identified and the status will be displayed. Applicants are obligated to check the on-line status of their application if they do not receive an immediate confirmation notice or an email notice of receipt as well as validation. HUD advises applicants to use this service to make sure the application was received by Grants.gov in accordance with section IV.C., entitled ''Receipt Dates and Times,'' and to track the application to see if it is validated or rejected by Grants.gov. Applications submitted after the one day grace period stipulated in Section IV.C., Receipt Dates and Times, will be considered late and will not receive funding consideration.

(9) *Understanding the Status Messages.* If the application has not been uploaded or received by Grants.gov, the status message will state, ''No data to display.'' Applicants seeing this message should attempt to submit their application if the deadline date has not passed. HUD will not accept an application that is received after the deadline date and time, if there is no prior record of a rejection notice.

If an application has been received, Grants.gov will note on the ''Application Status'' display that the application has been received. If the application has been received and validated, the status will display as validated.

If an application has been rejected, the status will display that the application has been rejected with errors and the applicant should click on the rejection to see what the error message was or should consult his or her email for the reasons for the rejection.

If an application has been received by HUD, the status will note that the application has been received by the granting agency.

When HUD assigns a tracking number, the status will indicate that the agency has assigned a tracking number.

Applications are not received by HUD until HUD pulls the application from Grants.gov. As long as the application shows validated by Grants.gov in accordance with the timely receipt requirement stated in this notice, applicants should not be concerned that the application was not received by HUD or not assigned a tracking number. That step of the process will occur when HUD pulls the applications from the Grants.gov site into its backend system.

(10) *Grants.gov Support Ticket Numbers.* If you call the Grants.gov Support Help Desk, the operator will provide you with a call reference ticket number. Applicants should retain a record of the call ticket number(s) along with the application receipts or rejection notices received from Grants.gov. If the Help Desk does not offer a ticket number, ask for one.

b. *Late applications.*

(1) Applications received by Grants.gov after the program NOFA deadline date or that do not meet the requirements of HUD's grace period policy will be considered a late application and will not be considered for funding. Applicants should pay close attention to the grace period policy and the timely receipt instructions, as they can make a difference in whether HUD will accept the application for funding consideration.

(2) HUD will not consider application information submitted by facsimile as part of the application, if received by HUD after the published deadline date, unless directed by HUD under the terms of paragraph V.B.4., Corrections to Deficient Applications. There is no grace period for submission of facsimile transmissions, as the facsimile system is not part of Grants.gov. HUD now has the ability to match the facsimile transmission to the last application received and validated in accordance with the deadline requirements. Please take into account the transmission time required for facsimile documents related to your application.

HUD recommends that applicants submit their applications during the operating hours of the Grants.gov Help Desk so that, if there are questions concerning transmission, operators will be available to assist you through the process. Submitting your application early and during the Help Desk hours will also ensure that you have sufficient time for the application to complete its transmission before the application deadline. If you try to submit your application after the Grants.gov Support Help Desk closes, please refer to HUD's Desktop Users Guide for Submitting Electronic Grant Applications found at *http://www.hud.gov/offices/adm/grants* and submission information contained in this notice.

c. *Submission Tips.*

(1) *Delayed Transmission Time.* Applicants using dial-up connections should be aware that transmitting your application takes extra time before Grants.gov receives it. Grants.gov will provide either an error or a successfully received transmission message. The Grants.gov Help Desk reports that some applicants abort the transmission because they think that nothing is occurring during the transmission process. Please be patient and give the system time to process the application. Uploading and transmitting a large file, particularly electronic forms with associated eXtensible mark-up language (XML) schema, will take considerable time to process and be received by Grants.gov. However, the upload even for large files should not take longer than one hour. If you are still waiting after one hour for the submission to be uploaded to Grants.gov, stop the transmission and check the available disk space and memory on your computer or check to see if you followed the submission requirements, including naming of files, and that you are using compatible versions of Adobe 8.1.3 with Adobe Professional on your computer operating system. HUD has found that difficulty in uploading an application from the applicant's desktop is most frequently due to: (a) Use of the wrong DUNS number or user name/password combination; (b) the application package being too large to be handled by the applicant's computer; (c) the applicant not downloading and setting the default settings to be compatible with the version of Adobe Reader downloaded; (d) the local entity's network limiting the size of files going in or out; (e) the Internet service provider having a file size limit (it often depends on the level of service contracted for); (f) the applicant's firewall is set to limit files going in or out, or access to certain Web sites; and (g) the applicant's anti-virus software or system set-up has placed other limits on accessing websites or file contents. HUD has found that if applicants, when uploading their applications, were first asked to permit access, it was usually because their firewall settings were preventing access to other websites, which resulted in submission failures. Applicants should check their firewall setting prior to beginning transmission to allow access to the Grants.gov portal. If you, the applicant, are experiencing long upload delays, or you receive a time-out error message, you should check your package for errors, anti-virus software, firewall, or Internet provider to be sure that there are no file size limits, and work with your IT support to address Internet, firewall, and anti-virus issues. In many instances, firewall and anti-virus protection can cause transmission problems and need to be disabled to permit a successful transmission. Applicants should also check their proxy and cache server configuration settings to ensure the application can be transmitted to

Grants.gov. Grants.gov uses HTTP post protocols on Port 80.

Please also ensure that file attachments are named in accord with the directions in this General Section. Be aware that multiple applications on a computer or very large files can overcome the processing power of a computer. If this is the case, you are advised to reduce the number and size of the attachment files by removing attachment files and submitting the attachments via the facsimile method, using the form HUD–96011 as the cover page, while the application without attachments should be uploaded to Grants.gov. HUD will match applications submitted to Grants.gov with facsimiles that have been transmitted following the directions in this notice. Do not split attachment files into two separate applications. HUD can only view the contents of a single application. For HUD to review the complete application, files must be transmitted with the application or associated with an application through use of the facsimile using the Facsimile Transmittal Cover Sheet (form HUD–96011). HUD will not match attachment files submitted either in two applications, or without using the cover sheet.

(2) *Using Task Manager to Monitor Processing.* Applicants experiencing long upload times or seeing a screen that states ''Processing do not close,'' can check to see if the application is frozen or just taking awhile to upload by turning on the Task Manager to see if there is any processing occurring. To view the Task Manager, press Ctrl+Alt+Delete (by holding down Ctrl and Alt and then pressing Delete). A dialog box will appear; select Task Manager. There are four tabs across the top of the Task Manager. Select the Performance tab; then you will see two pairs of windows: CPU and Page file usage and usage history. The little windows on the right side (usage history) look like little graphs moving from right to left about one tick every second. As long as those graphs continue to move toward the left, you know your machine is not frozen. If the graph lines stop moving for more than a few seconds, your machine is totally frozen and you should immediately shut down the application, remove cookies, close down and reboot your computer, and then try to upload again.

(3) *Uploading Directly from Your Internet Browser.* If you have difficulty submitting the application, close down all applications, then reboot your computer and follow these steps:

(a) Open the Internet Explorer browser on your computer.

(b) Go to the File Menu and select ''Open.'' This will cause the ''Open'' dialog box to appear.

(c) Click on the browse button, and another dialog box will appear with access to your files.

(d) In the dialog box, go to the drop-down menu for ''File Types'' and select ''All Files.''

(e) Through the dialog box, find the location of your saved application package (including the attachments).

(f) Once you have located your application package, select it with your mouse and click the ''Open'' button. The dialog box will disappear and the ''Open'' dialog box will still be present.

(g) In the ''Open'' dialog box, click on the ''OK'' button. Your application package will now appear.

(h) Within your application package, to submit, click on the ''Submit and Save'' button.

(4) *Ensure You Have Installed the Free Grants.gov Software.* Check to ensure that the latest version of the Adobe Reader software available from Grants.gov, which is free for system users, has been properly installed on your computer. Applicants will find a link to the free software for download at the *Download Application* page for the funding opportunity available on Grants.gov. HUD has found that an improper installation or not using the recommended version of the Adobe Reader 8.1.3 software will result in an application not being able to upload properly. If you are not sure how to determine if the software is properly installed, call the Grants.gov Support Desk. If you are operating your computer through a network, contact your system administrator to download the latest software. Please allow sufficient time for your network system administrator to respond to your request.

5. *Adobe Reader Error Messages.*

The following are common error messages applicants may encounter while completing or uploading an Adobe Reader application package.

a. *An Error Message Occurred During File Transmission.*

This error message means that you are experiencing network connectivity issues or the network is slow. The file that you are attempting to upload is NOT being fully transmitted to Grants.gov. Grants.gov recommends that you check the Internet connection or contact your IT support staff to check your network connectivity and then try again. Please remember that often networks or Internet service providers have limits on the size of files transmitted. Often Internet service providers require an upgrade in service to transmit larger files or unlimited size files. This may also be true for internal organizational networks.

b. *COS Parsing Exception at Position#######.*

If you receive this error message, the application package you submitted is corrupt and you have to resubmit a new application. Applicants are advised not to use data from the corrupt application to copy and paste into the new application because it is likely to corrupt the new application or cause transmission errors. Applicants should close and delete the corrupt file, download a new application package, open, complete the package manually and submit using a supported version of Adobe Reader. HUD also advises applicants that have attempted to upload the package through their browser to shut the browser and close all applications, delete any cookies, and then reboot before trying to resubmit.

c. *Error: org.xml.sax.SAXParseException:*

In most cases this error indicates the form opened with software that is unsupported such as:

- An incompatible version of Adobe Acrobat Professional.
- An incompatible version of Adobe Reader (other than 8.1.3).
- Other Software.

In order to submit an Adobe Reader application package, you must have a compatible version of Adobe Reader. If you have received this error message it is recommended that you download a new application package then open, complete and submit it with the compatible version of Adobe Reader. If you collaborate on the application with others, please ensure that they have the compatible version of the Adobe Reader. If they have more than one version of the Adobe Reader on their computer advise them to either reset the default setting or remove the non-compatible version of Adobe Reader and replace it with the free Adobe Reader software from Grants.gov. HUD also advises applicants that have attempted to upload the package through their browser to shut the browser and close all applications, delete any cookies, and then reboot before trying to resubmit.

d. *File Damaged and Cannot Be Repaired.*

This error message means that your application package is corrupt. In order to successfully submit an application package, you will need to download a new application and resubmit. To avoid corruption you must use a compatible version of the Adobe Reader to view and complete the application.

e. *Incompatible version of Adobe.*

You will receive this error message if your application was opened with software other than a compatible version of Adobe Reader. Any and all edits made to an Adobe Reader application package must be made with a compatible version of Adobe Reader. Applications submitted with other than supported versions of Adobe Reader will not work with the Grants.gov system. The compatible version of Adobe Reader is available at the Grants.gov Web site at *http://www.adobe.com/products/acrobat/readstep2_allversions.html*.

f. *Schema Validation Error.*

In most cases this error message indicates the application package was opened at one point in time with an unsupported version of:

- Adobe Reader.
- Adobe Professional.
- Other Software.

You should download a new application package, open and complete the package manually and submit using a supported version of the Adobe Reader. You cannot use an existing corrupted package or data from the package to export and populate a new package because it is likely to corrupt the new package and/or cause submission errors.

g. *Intake Servlet is Unable to Save the Data.*

This is an error message that may occur during Grants.gov processing. Grants.gov will reprocess the application retaining the original submission dates and times. Processing may result in validation or rejection of the application. See information on reasons for rejection of an application. Applicants receiving the ''Intake Servlet Unable to Save the Data'' error message should check the status of their application by logging onto Grants.gov with their user name and password and checking the application status. If the status does not show the application received call the Grants.gov Help Desk.

h. *Broken Pipe.* If you receive the ''Broken Pipe'' message, this means that there were intermittent interruptions during submission. As a result the confirmation screen did not display properly after you submitted your application. If the ''Broken Pipe'' error message displays, you will not automatically receive a Grants.gov confirmation page and tracking number for your application. To ensure that your application package was received you have two options:

(1) Use the on-line ''Track Application Status'' feature on Grants.gov and view your submitted applications. If you do not see your submitted application listed follow the instructions under item (b):

(2) Open the Internet browser window (*example:* Internet Explorer) and resubmit your application package as normal. If you still do not receive the confirmation page after you resubmit your application package, contact the Grants.gov Help Desk by calling 800–518-GRANTS or e-mailing *Support@Grants.gov*. HUD recommends calling the center for faster service.

i. *Error: Failed to Update Grant Application XML's LOB:Failed to Update Grant Application XML's LOB.* Grants.gov automatically reprocesses these applications. You should receive a receipt notification and either a rejection or validation notice following reprocessing. Applicants are advised to track the applications via the on-line ''Track Application Status,'' the e-mail notifications or by calling the Grants.gov Help Desk. Reprocessed applications retain their original receipt times.

Grants.gov has also established a troubleshooting page for applicants at *http://www.grants.gov/help/trouble_tips.jsp*. Applicants are advised to be familiar with this page and pass on this information and the General Section instructions to any persons working on your application or charged with submitting the application on behalf of your organization.

D. *Intergovernmental Review/State Points of Contact (SPOC).* Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' was issued to foster intergovernmental partnership and strengthen federalism by relying on state and local processes for the coordination and review of federal financial assistance and direct development. HUD implementing regulations are published at 24 CFR part 52. The Executive Order allows each state to designate an entity to perform a state review function. Applicants can find the official listing of SPOCs for this review process at *http://www.whitehouse.gov/omb/grants/spoc.html*. States not listed on the Web site have chosen not to participate in the intergovernmental review process and, therefore, do not have a SPOC. If your state has a SPOC, you should contact the SPOC to see if it is interested in reviewing your application before you submit it to HUD.

Please make sure that you allow ample time for this review when developing and submitting your application. If your state does not have a SPOC, you can submit your application directly to HUD using Grants.gov.

E. *Funding Restrictions.* The individual program NOFAs will describe any funding restrictions that apply to each program.

F. *Other Submission Requirements.*

1. *Discrepancies Between the* ***Federal Register*** *and Other Documents.* The **Federal Register** documents published by HUD are the official documents that HUD uses to solicit applications. Therefore, if there is a discrepancy between any materials published by HUD in its **Federal Register** publications and other information provided in paper copy, electronic copy, at *http://www.grants.gov,* or its Help Desk, or at HUD's Web site, the **Federal Register** publication prevails. Please be sure to review your application submission against the requirements in the **Federal Register** for the program NOFA or NOFAs to which you are applying. If you note discrepancies, please notify HUD immediately by calling the program contact listed in the NOFA, or the Office of Departmental Grants Management at 202–708–0667 (this is not a toll-free number).

2. *Application Certifications and Assurances.* Applicants are placed on notice that by signing (either through electronic submission or in paper copy submission, for those applicants granted a waiver to submit in paper) the SF–424 cover page:

a. The governing body of the applicant's organization has duly authorized the application for federal assistance. In addition, by signing or electronically submitting the application, the AOR certifies that the applicant:

(1) Has the legal authority to apply for federal assistance and has the institutional, managerial, and financial capacity (including funds to pay for any non-federal share of program costs) to plan, manage, and complete the program as described in the application;

(2) Will provide HUD with any additional information it may require; and

(3) Will administer the award in compliance with requirements identified and contained in the NOFA (General and Program Sections), as applicable to the program for which funds are awarded and in accordance with requirements applicable to the program.

b. No appropriated federal funds have been paid or will be paid, by or on behalf of the applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress, in connection with this application for federal assistance or any award of funds resulting from the submission of this application for federal assistance or its

extension, renewal, amendment, or modification. If funds other than federally appropriated funds have been or will be paid for influencing or attempting to influence the persons listed above, the applicant agrees to complete and submit the SF–LLL, Disclosure of Lobbying Activities, as part of its application submission package. The applicant further agrees to and certifies that it will require similar certification and disclosure of all subawards at all tiers, including subgrants and contracts.

c. Federally recognized Indian tribes and tribally designated housing entities (TDHEs) established by a federally recognized Indian tribe, as a result of the exercise of the tribe's sovereign power, are excluded from coverage by item b. (also known as the Byrd Amendment). However, state-recognized Indian tribes and TDHEs established under state law are not excluded from the statute's coverage and, therefore, must comply with item b. above.

By submitting an application, the applicant affirms its awareness of these certifications and assurances. The AOR submitting the application is affirming that these certifications and assurances are material representations of the facts upon which HUD will rely when making an award to the applicant. If it is later determined that the signatory to the application submission knowingly made a false certification or assurance or did not have the authority to make a legally binding commitment for the applicant, the applicant may be subject to criminal prosecution, and HUD may terminate the award to the applicant organization or pursue other available remedies.

3. *Waiver of Electronic Submission Requirements.* The regulatory framework for HUD's electronic submission requirement is the final rule established in 24 CFR 5.1005. Applicants seeking a waiver of the electronic submission requirement must request a waiver in accordance with 24 CFR 5.1005. HUD's regulations allow for a waiver of the electronic submission requirement for good cause. If the waiver is granted, the applicable program office's response will include instructions on how many copies of the paper application must be submitted, as well as how and where to submit them. Applicants that are granted a waiver of the electronic submission requirement will not be afforded additional time to submit their applications. The deadlines for applications will remain as provided in the program section of the NOFA. As a result, applicants seeking a waiver of the electronic application submission requirement should submit their waiver request with sufficient time to allow HUD to process and respond to the request. Applicants should also allow themselves sufficient time to submit their application so that HUD receives the application by the established deadline date. For this reason, HUD strongly recommends that if an applicant finds it cannot submit its application electronically and must seek a waiver of the electronic grant submission requirement, it should submit the waiver request to the HUD program office designated in the applicable program NOFA no later than 15 days before the application deadline. To expedite the receipt and review of such requests, applicants may email their requests to the program contact listed in the program NOFA. If HUD does not have sufficient time to process the waiver request, a waiver will not be granted. Paper applications received without a prior approved waiver and/or after the established deadline date will not be considered. Applicants that submit a paper application with the wrong DUNS number will be provided the same one-day grace period to provide a corrected SF–424 to the location indicated in the waiver approval. Failure to meet the requirements will deem the application late and, as a result, the application will not be considered, rated, or ranked.

V. Application Review Information

A. Criteria

1. *Factors Used to Evaluate and Rate Applications.* For each program NOFA, the points awarded for the rating factors total 100, with a possibility of up to 2 bonus points, as specified below:

a. *RC/EZ/EC–II.* HUD will award two bonus points to each application that includes a valid form HUD–2990 certifying that the proposed activities/projects in the application are consistent with the strategic plan for an empowerment zone (EZ) designated by HUD or the U.S. Department of Agriculture (USDA), the tax incentive utilization plan for an urban or rural renewal community designated by HUD (RC), or the strategic plan for an enterprise community designated in round II by USDA (EC–II); and that the proposed activities/projects will be located within the RC/EZ/EC–II identified above and are intended to serve the residents. For ease of reference in this notice, all of the federally designated areas are collectively referred to as ''RC/EZ/EC–IIs'' and residents of any of these federally designated areas as ''RC/EZ/EC–II residents.'' The individual funding announcements will indicate if the bonus points are available under the program. This notice contains a certification that must be completed for the applicant to be considered for RC/EZ/EC–II bonus points. Applicants can obtain a list of RC/EZ/EC–IIs from HUD's grants Web page at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* Applicants can determine if their program or project activities are located in one of these designated areas by using the locator on HUD's Web site at *http://egis.hud.gov/egis/.*

b. *The Five Standard Rating Factors for FY2009.* HUD has established the following five standard factors for awarding funds under the majority of its FY2009 program NOFAs. When providing information to HUD in response to Rating Factor 1, Capacity, applicants should not include Social Security Numbers on any resumes submitted to HUD.

Factor 1: Capacity of the Applicant and Relevant Organizational Staff.

Factor 2: Need/Extent of the Problem.

Factor 3: Soundness of Approach.

Factor 4: Leveraging Resources.

Factor 5: Achieving Results and Program Evaluation.

In FY2009, HUD is establishing standardized points for evaluating Logic Models submitted under Rating Factor 5, Achieving Results and Program Evaluation. The decision to standardize this rating factor resulted from review of submitted Logic Models and rating factor narrative statements, and training sessions held with HUD staff and the applicant community.

By standardizing the rating for the Logic Model submission, HUD believes that a greater understanding will be gained on the use and relationship of the Logic Model to information submitted as part of the Rating Factors for award. The standardization of the Logic Model submission in Rating Factor 5 highlights the relationship between the narratives produced in response to the factors for award, stated outputs and outcomes, and discrepancies or gaps that have been found to exist in submitted Logic Models. HUD also believes that the standardization will strengthen the use of the Logic Model as a management and evaluation tool.

The Logic Model is a tool that integrates program operations and program accountability. It links program operations (mission, need, intervention, projected results, and actual results), and program accountability (measurement tool, data source, and frequency of data collection and reporting, including personnel assigned

to function). Applicants/grantees should use it to support program planning, monitoring, evaluation, and other management functions.

HUD uses the Logic Model and its electronic version, the eLogic Model®, to capture an executive summary of the application submission in data format, which HUD uses to evaluate the attainment of stated applicant goals and anticipated results. HUD also uses the data for policy formulation.

HUD encourages applicants and those selected for award to use the Logic Model data to monitor and evaluate their own progress and effectiveness in meeting stated goals and achieving results consistent with the program purpose. To further this objective, and in response to grantee requests, for FY2009 HUD has added an additional column to the eLogic Model® that allows the grantee to input results achieved for the reporting period, as well as Year-To-Date (YTD) for each year of the award. This will allow the grantee to review performance each reporting period and for each year of the award ''at a glance,'' and without having to construct a report. For further information, see the Instructions in the FY2009 eLogic Model®, form HUD–96010. HUD's goal is to measure the effectiveness of programs and ensure that housing, economic development programs, and services provided by HUD funds provide maximum benefit to low- and moderate-income persons in communities nationwide.

Factor 5, Achieving Results and Program Evaluation, will consist of 10 points for the Logic Model submission. Program areas can add up to an additional 5 points for responses to particular programmatic questions to be addressed as part of this factor. The matrix provided in Attachment 1 of this General Section identifies how the Logic Model will be rated in a standardized way across program areas. Training on the rating factor will be provided via satellite broadcast and archived on HUD's Web site for repeat viewing.

Additional details about the five rating factors and the maximum points for each factor are provided in the program NOFAs. For a specific funding opportunity, HUD may modify these factors to take into account explicit program needs or statutory or regulatory limitations. Applicants should carefully read the factors for award as described in the program NOFA to which they are responding.

The Continuum of Care Homeless Assistance programs have only two factors that receive points: (1) Need and (2) Continuum of Care. Additional information will be available in the Continuum of Care program NOFA to be published in the **Federal Register**.

c. *Additional Criteria: Past Performance.* In evaluating applications for funding, HUD will take into account an applicant's past performance in managing funds, including, but not limited to, the ability to account for funds appropriately; timely use of funds received either from HUD or other federal, state, or local programs; timely submission and quality of reports to HUD; meeting program requirements; meeting performance targets as established in Logic Models approved as part of the grant agreement; timelines for completion of activities and receipt of promised matching or leveraged funds; and the number of persons to be served or targeted for assistance. HUD may consider information available from HUD's records; the name check review; public sources such as newspapers, Inspector General or Government Accountability Office reports or findings; or hotline or other complaints that have been proven to have merit.

In evaluating past performance, HUD may elect to deduct points from the rating score or establish threshold levels as specified under the Factors for Award in the individual program NOFAs. Each program NOFA will specify how past performance will be rated.

B. Reviews and Selection Process

1. HUD's Strategic Goals to Implement HUD's Strategic Framework and Demonstrate Results. HUD is committed to ensuring that programs result in the achievement of HUD's strategic mission. To support this effort, grant applications submitted for HUD programs will be rated on how well they tie proposed outcomes to HUD's policy priorities and annual goals and objectives, as well as the quality of the applicant's proposed evaluation and monitoring plans. HUD's strategic framework establishes the following goals and objectives for the Department:

a. *Increase Homeownership Opportunities.*

(1) Expand national homeownership opportunities.

(2) Increase minority homeownership.

(3) Make the home buying process less complicated and less expensive.

(4) Reduce predatory lending through reform, education, and enforcement.

(5) Help HUD-assisted renters become homeowners.

(6) Keep existing homeowners from losing their homes.

b. *Promote Decent Affordable Housing.*

(1) Expand access to and the availability of decent, affordable rental housing.

(2) Improve the management accountability and physical quality of public and assisted housing.

(3) Improve housing opportunities for the elderly and persons with disabilities.

(4) Promote housing self-sufficiency.

(5) Facilitate more effective delivery of affordable housing by reforming public housing and the Housing Choice Voucher program.

c. *Strengthen Communities.*

(1) Assist disaster recovery in the Gulf Coast region.

(2) Enhance sustainability of communities by expanding economic opportunities.

(3) Foster a suitable living environment in communities by improving physical conditions and quality of life.

(4) End chronic homelessness and move homeless families and individuals to permanent housing.

(5) Address housing conditions that threaten health.

d. *Ensure Equal Opportunity in Housing.*

(1) Ensure access to a fair and effective administrative process to investigate and resolve complaints of discrimination.

(2) Improve public awareness of rights and responsibilities under fair housing laws.

(3) Improve housing accessibility for persons with disabilities.

(4) Ensure that HUD-funded entities comply with fair housing and other civil rights laws.

e. *Embrace High Standards of Ethics, Management, and Accountability.*

(1) Strategically manage human capital to increase employee satisfaction and improve HUD performance.

(2) Improve HUD's management and internal controls to ensure program compliance and resolve audit issues.

(3) Improve accountability, service delivery, and customer service of HUD and its partners.

(4) Capitalize on modernized technology to improve the delivery of HUD's core business functions.

f. *Promote Participation of Faith-Based and Other Community Organizations.*

(1) Reduce barriers to faith-based and other community organizations' participation in HUD-sponsored programs.

(2) Conduct outreach and provide technical assistance to strengthen the capacity of faith-based and community organizations to attract partners and secure resources.

(3) Encourage partnerships between faith-based/other community organizations and HUD's grantees and subgrantees.

Additional information about HUD's Strategic Plan FY2006–FY2011, and 2002–2008 Annual Performance Plans is available at *http://www.hud.gov/offices/cfo/reports/cforept.cfm.*

2. *Policy Priorities.* HUD encourages applicants to undertake specific activities that will assist the Department in implementing its policy priorities and achieving its goals for FY2009 and beyond. Applicants that include work activities that specifically address one or more of these policy priorities will receive higher rating scores than applicants that do not address these HUD priorities. Each NOFA issued in FY2009 will specify which priorities relate to a particular program and how many points will be awarded for addressing those priorities.

a. *Improving the Knowledge of Homeowners, Homebuyers, and Renters to be Aware of Discriminatory Practices in Real Estate and Lending; their Rights; and Increase Financial Literacy to Prevent Foreclosure to Address the Needs of Households Facing Foreclosure.*

Many households are currently at risk of losing their homes or are currently facing foreclosure procedures. Other households, particularly households composed of low- and moderate-income persons, persons with disabilities, the elderly, minorities, and persons with limited English proficiency are shut out of the housing market or face discriminatory lending or rental practices. HUD is interested in applicants undertaking the following types of activities to address the needs of these households such as:

(1) *Providing Credit Counseling and Education for Families and Individuals.*

- How to track spending and establishing a household budget;
- Managing credit cards and credit card debt;
- Understanding a credit report and how to improve credit scores;
- Establishing a savings plan and investment plan;
- How to prevent foreclosure;
- Understanding the foreclosure process and options open to homeowners;
- Buying a foreclosed home—opportunities and risks.

(2) *Homebuying Information for New Homeowners.*

- Buying a new home;
- Buying an FHA Real Estate Owned Property;
- Buying a foreclosed property;
- Understanding loan alternatives;
- Understanding FHA mortgages and options;
- Financial ability to repay a loan;
- Accounting for additional expenses;
- Understanding the appraisal process;
- Understanding a home inspection process and report;
- Understanding predatory lending practices; and
- Understanding your rights under the Fair Housing Act and fair lending practices;

(3) *Rental Housing Options.*

- Understanding lease agreements;
- Understanding landlord tenant rights and responsibilities;
- Understanding lending discrimination; and
- Understanding discriminatory rental practices and where to seek assistance;

(4) How to file a housing discrimination complaint.

(5) Complying with Limited English Proficiency requirements.

(6) Addressing the needs of homeowners, homebuyers, and renters who are persons with disabilities;

- How to design informational literature and presentations for persons with disabilities,
- Understanding accessible design and visibility standards for educating architects, builders, local, and state officials to increase the housing choices for persons with Limited English Proficiency or persons with disabilities;
- Understanding how to market to persons with disabilities; and
- Educating persons with disabilities on Uniform Accessibility Standards (UFAS), which apply to section 504 of the Rehabilitation Act of 1973.

Applicants seeking a policy priority point must identify the specific activities to be undertaken and the expected outcomes to be achieved as a result of the activities. The outcomes must be expressed in terms of the numbers of households assisted that either obtained rental housing or achieved homeownership; were able to improve their credit score or prevent foreclosure; were able to retain their home after having received a notice of foreclosure; were able to obtain a mortgage loan or reduce the rate or the amount owed on their mortgage; were able to find affordable rental housing that is accessible and visitable; or reported and/or filed a Fair Housing complaint. Copies of the UFAS are available online at *http://www.access-board.gov/ufas/ufas-html/ufas.htm.* The design and construction requirements for covered multifamily dwelling units that are applicable to the Fair Housing Act are found at *http://www.fairhousingfirst.org* and select ''Design or Construction Requirements.''

Proposed activities support strategic goals a, b, and d.

b. *Encouraging Accessible Design Features.* As described in section III.C.2.c., applicants must comply with applicable civil rights laws, including the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. These laws and regulations implementing them prohibit discrimination based on disability and require recipients to ensure that assisted housing, facilities, programs, and activities are accessible to persons with disabilities, including meeting accessibility design standards. HUD is encouraging applicants to add accessible design features beyond those required under civil rights laws and regulations. Such features would eliminate barriers not addressed by design standards that limit the access of persons with disabilities to housing and other facilities. Copies of the UFAS are available online at *http://www.access-board.gov/ufas/ufas-html/ufas.htm;* from the NOFA Information Center at 800–HUD–8929 (toll free); and from the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5240, Washington, DC 20410–2000; telephone number 202–708–2333 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 800–877–8339. (This is a toll-free number.)

Accessible design features are intended to promote visitability and incorporate features of universal design, as described below.

(1) *Visitability in New Construction and Substantial Rehabilitation.* Applicants are encouraged to incorporate visitability features, where feasible, in new construction and substantial rehabilitation projects. Visitability features allow a person with mobility impairments access into the home, even if such features are not required by accessibility standards. Applicants should be aware of any locally adopted visitability standards. Generally, visitability standards or guidelines do not require that all features of a housing or other facility be made accessible to a person with a disability. Visitability means that there is at least one entrance at grade (no steps), approached by an accessible route such as a sidewalk, and that the entrance door and all interior passage doors are at least 2 feet, 10 inches wide, allowing 32 inches of clear passage space. A visitable home also serves

persons without disabilities, such as a mother pushing a stroller or a person delivering a large appliance. More information about visitability is available at *http://www.concretechange.org/.*

Activities support strategic goals b, c, and d.

(2) *Universal Design.* Applicants are encouraged to incorporate universal design in the construction or rehabilitation of housing, retail establishments, and community facilities funded with HUD assistance. Universal design is the design of products and environments to be usable by all people to the greatest extent possible, without the need for adaptation or specialized design. The intent of universal design is to simplify life for everyone by making products, communications, and the built environment more usable by as many people as possible at little or no extra cost to the user. In addition to any applicable required accessibility feature under section 504 of the Rehabilitation Act of 1973 or the design and construction requirements of the Fair Housing Act, the Department encourages applicants to incorporate the principles of universal design when developing housing, community facilities, and electronic communication mechanisms, or when communicating with community residents at public meetings or events.

HUD believes that to address affordable housing needs effectively, it is necessary to provide affordable housing that is accessible to all regardless of ability or age. Likewise, creating places where people work, train, and interact that are usable and open to all residents increases opportunities for economic and personal self-sufficiency. More information on universal design is available from the Center for Universal Design at *http://www.design.ncsu.edu/cud/* or the Resource Center on Accessible Housing and Universal Design at *http://www.abledata.com/abledata.cfm?pageid=113573&top=16029&sectionid=19326.*

To obtain the policy priority point, applicants must identify the proposed number of units or facilities which will be provided that incorporate Universal Design and/or Visitability Features, including what features are planned for inclusion in the design and for how many units. Individual NOFAs will identify the minimum number of units or community facility areas that must comply with this requirement to receive the policy priority point. Selected applicants will be required to report on an annual basis the number of units that were completed according to the plan; and the actual number of households that were placed in the units, including the square footage of units or public facilities or common areas. Applicants must identify visitability features that will be part of their program of activities and its projected results, including linear feet of sidewalk, walkway, or other areas that were created or modified to enhance visitability or meet locally adopted visitability requirements.

Activities support strategic goals a through d.

c. *Providing Full and Equal Access to Grassroots Faith-Based and Other Community Organizations in HUD Program Implementation.*

(1) HUD encourages applicants to partner with nonprofit organizations, including grassroots faith-based and other community organizations, in the implementation of the vast array of programs for which funding is available through HUD's competitive programs. Grassroots organizations have a strong history of providing vital community services. Additionally, HUD encourages applicants to include grassroots faith-based and other community organizations in their work plans. Applicants who identify at least 15 percent of the total work activities to be conducted will be performed by grassroots nonprofit organizations, including faith-based and community-based organizations in their program work statement and implementation activities, will be eligible to receive the policy priority point.

(2) Definitions of Grassroots Organizations.

(a) HUD will consider an organization a ''grassroots organization'' if the organization is headquartered in the local community in which it provides services; and

(i) Has a social services budget of $300,000 or less, or

(ii) Has six or fewer full-time equivalent employees.

(b) Local affiliates of national organizations are not considered ''grassroots.'' Local affiliates of national organizations are encouraged, however, to partner with grassroots organizations, but must demonstrate that they are currently working with a grassroots organization (*e.g.*, having a grassroots faith-based or other community organization provide volunteers).

(c) The cap provided in paragraph (2)(a)(i) above includes only that portion of an organization's budget allocated to providing social services. It does not include other portions of the budget, such as salaries and expenses, not directly expended in the provision of social services.

Applicants will be required to identify and describe in detail the work activities to be performed by the grassroots organizations including projected outputs and outcomes in their application for assistance. Selected applicants for funding will be required to report in accordance with the reporting requirements for the program, the results achieved against the projected outputs and outcomes.

Activities support strategic goal f.

d. *Participation of Minority-Serving Institutions (MSIs) in HUD Programs.* Pursuant to Executive Orders 13256, ''President's Board of Advisors on Historically Black Colleges and Universities;'' 13230, ''President's Advisory Commission on Educational Excellence for Hispanic Americans;'' 13216, ''Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs;'' and 13270, ''Tribal Colleges and Universities,'' HUD is strongly committed to broadening the participation of MSIs in its programs. HUD is interested in increasing the participation of MSIs in providing assistance to New Orleans and other communities that suffer from the long-term and devastating effects of presidentially-declared disasters which are currently listed as active on the Federal Emergency Management Agency's (FEMA) Web site. To receive the policy priority point, the applicant must include a listing of the proposed work activities to be performed by the MSI; the specific sites where the work will be performed; and the projected output and outcome of the work to be performed that will result in a physical, social, or economic change in the community being assisted as a result of the work activities. MSIs that receive direct HUD funding are not eligible to receive the policy priority point unless they can demonstrate that their work activities are targeted to disaster areas and not just areas surrounding their campus, unless it is a city or community that experienced a declared and active disaster determined by the President. A listing of MSIs can be found on the Department of Education Web site at *http://www.ed.gov/about/offices/list/ocr/edlite-minorityinst.html* or HUD's Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* A listing of presidentially declared disasters can be found at *http://www.fema.gov/news/disaster_totals_annual.fema.*

Activities support strategic goals c and d.

e. *Ending Chronic Homelessness.* President Bush has set a national goal to end chronic homelessness. HUD

Secretary Steven Preston has embraced this goal and has pledged that HUD's grant programs will be used to support the President's goal and better meet the needs of chronically homeless individuals. A person experiencing chronic homelessness is defined as an unaccompanied individual with a disabling condition who has been continuously homeless for a year or more or has experienced four or more episodes of homelessness over the last 3 years. A disabling condition is defined as a diagnosable substance abuse disorder, serious mental illness, developmental disability, or chronic physical illness or disability, including the co-occurrence of two or more of these conditions. Applicants are encouraged to target assistance to chronically homeless persons by undertaking activities that will result in:

(1) Creation of affordable housing units, supportive housing, and group homes;

(2) Establishment of a set-aside of units of affordable housing for the chronically homeless;

(3) Establishment of substance abuse treatment programs targeted to the homeless population;

(4) Establishment of job training programs that will provide opportunities for economic self-sufficiency;

(5) Establishment of counseling programs that assist homeless persons in finding housing, managing finances, managing anger, and building interpersonal relationships;

(6) Provision of supportive services, such as health care assistance, that will permit homeless individuals to become productive members of society; and

(7) Provision of service coordinators or one-stop assistance centers that will ensure that chronically homeless persons have access to housing assistance and a variety of social services.

Applicants that are developing programs to meet the goals set in this policy priority should keep in mind the requirements of the regulations implementing Section 504 of the Rehabilitation Act, in particular, 24 CFR 8.4(b)(1)(iv), 8.4(c)(1), and 8.4(d).

To receive the policy priority point, applicants must coordinate with the local Continuum of Care lead agency and propose work activities to fill the need already established by the local Continuum of Care. Applicants must include supporting documentation from the local Continuum of Care or member agency in their application and include specific tasks and projected outputs and outcomes. If selected for funding, applicants must compare the actual results against projected outcomes in accordance with the program NOFA reporting periods contained in the program NOFA.

Activities support strategic goals b and c.

f. *Promoting Energy Star and Green Development.* HUD is encouraging grantees to take specific energy-saving actions in furtherance of HUD's Energy Action Plan described in the August 2006 Report to Congress entitled: ''Promoting Energy Efficiency at HUD in a Time of Change,'' submitted under section 154 of the Energy Policy Act of 2005 (Pub. L. 109–58). (A copy of the report can be obtained at *http://www.huduser.org/publications/destech/energyefficiency.html*.) Under this policy priority, HUD is providing up to two policy priority points, as follows:

(1) Applicants/grantees that design, build, rehabilitate, or operate housing or community facilities.

(a) *Energy Star Appliances and Products.* Grantees that design, build, or operate housing or community facilities with funds awarded through HUD's NOFAs will receive one policy priority point if they incorporate energy-efficiency measures in the design, construction, and operation of these properties. To receive a point, grantees must meet the following criteria:

- *Moderate rehabilitation and/or Building Operation and Maintenance:* Use Energy Star-labeled appliances and products.
- *New construction or substantial rehabilitation (single family):* All units must be certified by a Home Energy Rater as an Energy Star Qualified Home; and all appliances must be Energy Star qualified.
- *New construction or substantial rehabilitation (multifamily):* Meet ASHRAE 90.1–2007 plus 20 percent (Appendix G) and appliances must be Energy Star qualified. A heat load analysis showing compliance with this standard must be completed by the project architect or engineer during the design phase of the project.
- *Housing Counseling:* Provide training on energy costs and budgeting, as well as energy efficient products and appliances, including Energy Star, in counseling curriculum.

(b) *Green Development.* HUD is also interested in promoting green building. Therefore, applicants that demonstrate they will undertake green development in the implementation of their program are eligible to receive one additional policy priority point for green development. This additional policy priority point for green development is available only to applicants that fulfill the requirements for use of Energy Star appliances and products above, plus undertake green development.

Green development means that one of several recognized green rating programs, including: the Energy Star Plus Indoor Air Package or Energy Star Advanced New Home Construction; Earthcraft; Enterprise Green Communities Initiative; the National Association of Home Builders (NAHB) Green Building Guidelines; Leadership in Energy and Environmental Design (LEED) for Homes (for single family); and LEED New Construction (for multifamily) is used in the design and construction of properties. For green programs that require third-party certification, the applicant must provide evidence of such certification. For green programs that require self-certification, the applicant must provide evidence of self-certification, such as the Enterprise Green Communities checklist. Applicants that elect to meet the requirements for Green Development will receive one policy priority point.

Applicants electing to meet these requirements must agree to use the HUD/PIH Benchmarking Tool at *http://www.hud.gov/offices/pih/programs/ph/phecc/econserve.cfm* to enter utility data for the first year after building occupancy, and report the results to HUD. The building would be expected to achieve a score of at least 65 (15 percent over average). For information on Energy Star Qualified Homes and Energy Star qualified products, see *http://www.energystar.gov.*

(2) Applicants/grantees that provide housing counseling, housing counseling training or community development technical assistance.

(a) *Energy Star Appliances and Products.* Applicants/grantees that receive funds for HUD's Housing Counseling, Housing Counseling Training, and Community Development Technical Assistance programs will receive policy priority points if, when providing counseling or training services or technical assistance, they include information on Energy Star appliances and products and information on the potential cost savings associated with buildings constructed using Energy Star standards.

(b) *Green Development.* Applicants/grantees that receive funds for HUD's Housing Counseling, Housing Counseling Training, and Community Development Technical Assistance programs will receive one additional policy priority point if, when providing counseling or training services or technical assistance, they provide information on Green Design, Development, and Certification

Standards in addition to the Energy Star information in the preceding paragraph.

Activities support strategic goals a and b.

g. *Promoting Assistance to Veterans.*

HUD is interested in applicants who incorporate assistance to veterans in the development and implementation of their proposed program of activities. HUD will provide a policy priority point to applicants that provide assistance to veterans in their transition from military service to civilian life, by addressing veterans' needs for housing, community-based services, or job training and employment opportunities. To receive the policy priority point, applicants will have to identify specific activities that are targeted to veterans; the housing, community development, or economic development need being addressed; the number of veterans anticipated to be assisted; and the anticipated outcome that will result from the services provided. Applicants must provide projected number of veterans to be directly assisted, and the actual number of veterans receiving the assistance and what were the results of the services delivered in terms of the number of veterans provided housing, job training, jobs acquired, or social services received. Applicants selected for funding must compare actual results against projected outcomes in accordance with the program NOFA reporting periods contained in the program NOFA.

Activities support strategic goals c and d.

3. *Threshold Compliance.* Only applications that meet all of the threshold requirements will be eligible to receive an award of funds from HUD.

4. *Corrections to Deficient Applications.* After the application deadline, and in accordance with the electronic submission grace period described in this notice, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information that an applicant may want to provide. HUD may contact an applicant to clarify an item in its application or to correct curable (correctable) technical deficiencies. HUD may not seek clarification of items or responses that improve the substantive quality of an applicant's response to any rating factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application, and will do so on a uniform basis for all applicants.

Examples of curable (correctable) technical deficiencies include inconsistencies in the funding request, failure to submit the proper certifications, and failure to submit an application that contains a signature by an official able to make a legally binding commitment on behalf of the applicant. In the case of an applicant that received a waiver of the regulatory requirement to submit an electronic application, the technical deficiency may include failure to submit an application that contains an original signature. If HUD finds a curable deficiency in the application, HUD will notify the applicant in writing by describing the clarification or technical deficiency. HUD will notify applicants by e-mail, facsimile, or via the U.S. Postal Service, return receipt requested. Clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 5 calendar days of the date of receipt of the HUD notification. (If the deadline date falls on a Saturday, Sunday, or federal holiday, the applicant's correction must be received by HUD on the next day that is not a Saturday, Sunday, or federal holiday.) In the case of electronic submissions to Grants.gov, any clarifications or cure items must be submitted electronically using the facsimile telephone number and form HUD–96011, Facsimile Cover Page, contained in the last application package submitted to HUD. The additional information will be matched to the electronic application in HUD's files. Applicants must follow the facsimile requirements found elsewhere in this notice. If the deficiency is not corrected within the above time frame, HUD will reject the application as incomplete, and it will not be considered for funding. In order to meet statutory deadlines for the obligation of funds or for timely completion of the review process, program NOFAs may reduce the number of days for submitting a response to a HUD request for clarification or correction to a technical deficiency. Please be sure to carefully read this notice and each program NOFA for any additional information and instructions. An applicant's response to a HUD notification of a curable deficiency should be submitted directly to HUD in accordance with the instructions provided in the notification.

5. *Rating Panels.* To review and rate applications, HUD may establish panels that may include persons not currently employed by HUD. HUD may include these non-HUD employees to obtain particular expertise and outside points of view, including views from other federal agencies. Persons brought into HUD to review applications are subject to conflict-of-interest provisions. In addition, reviewers using HUD IT systems may be subject to an IT security check.

6. *Rating.* HUD will evaluate and rate all applications for funding that meet the threshold requirements.

7. *Ranking.* HUD will rank applicants within each program or, for Continuum of Care applicants, across the three programs identified in the Continuum of Care NOFA. HUD will rank applicants against only those applying for the same program funding.

Where there are set-asides within a program competition, the applicant will compete against only those applicants in the same set-aside competition.

C. Anticipated Announcement and Award Dates

The individual program NOFAs will provide the applicable information regarding this subject.

VI. Award Administration Information

A. Award Notices

1. *Negotiation.* After it has rated and ranked all applications and made selections, HUD may require, depending upon the program, that a selected applicant participate in negotiations to determine the specific terms of the funding agreement and budget. In cases where HUD cannot successfully conclude negotiations with a selected applicant or a selected applicant fails to provide HUD with requested information, an award will not be made to that applicant. In such an instance, HUD may offer an award to, and proceed with negotiations with, the next highest-ranking applicant.

2. *Adjustments to Funding.*

a. To ensure the fair distribution of funds and enable the purposes or requirements of a specific program to be met, HUD reserves the right to fund less than the full amount requested in an application.

b. HUD will not fund any portion of an application that: (1) Is not eligible for funding under specific HUD program statutory or regulatory requirements; (2) does not meet the requirements of this notice; or (3) is duplicative of other funded programs or activities from prior year awards or other selected applicants. Only the eligible portions of an application (excluding duplicative portions) may be funded.

c. If funds remain after funding the highest-ranking applications, HUD may fund all or part of the next highest-ranking application in a given program. If an applicant turns down an award offer, HUD will make an offer of funding to the next highest-ranking application.

d. If funds remain after all selections have been made, remaining funds may be made available within the current fiscal year for other competitions within the program area or be held over for future competitions.

e. If, subsequent to announcement of awards made under the FY2009 NOFAs, additional funds become available either through a supplemental appropriation or recapture of funds during FY2009, HUD reserves the right to use the additional funding to provide full funding to an FY2009 applicant that was denied the requested amount of funds due to insufficient funds to make the full award, and/or to fund additional applicants that were eligible to receive an award but for which there were no funds available.

f. Individual program NOFAs may have other requirements, so please review the program NOFAs carefully.

3. *Funding Errors.* In the event HUD commits an error that, if corrected, would result in selection of an applicant during the funding round of a program NOFA, HUD may select that applicant for funding, subject to the availability of funds.

4. *Performance and Compliance Actions of Funding Recipients.* HUD will measure and address the performance and compliance actions of funding recipients in accordance with the applicable standards and sanctions of their respective programs.

5. *Debriefing.* For a period of at least 120 days, beginning 30 days after the awards for assistance are publicly announced, HUD will provide to a requesting applicant a debriefing related to its application. A request for debriefing must be made in writing or by email by the authorized official whose signature appears on the SF–424 or by his or her successor in office, and be submitted to the person or organization identified as the contact under the section entitled ''Agency Contact(s)'' in the individual program NOFA under which the applicant applied for assistance. Information provided during a debriefing will include, at a minimum, the final score the applicant received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

B. *Administrative and National Policy Requirements.* See Section III.C. of this notice regarding related requirements.

C. Reporting

1. *Use of a Logic Model to Report Performance.* In FY2004, HUD began using as a planning tool the Logic Model submitted as part of NOFA applications. In FY2005, HUD required grant agreements to incorporate performance reporting against the approved Logic Model. In FY2006, HUD moved to standardized ''master'' Logic Models from which applicants can select needs, activities/outputs, and outcomes appropriate to their programs. In addition, program offices have identified Program Management Evaluation Questions that grantees will be required to report on, as specified in the approved program eLogic Model®. The time frame established for the Logic Model reporting will be in accordance with the program's established reporting periods and as stated in the program NOFA.

2. *Placement of Approved Logic Models and Reports on HUD's Web site.* It is HUD's intent to publish approved Logic Models and grantee progress reports submitted to HUD on its Grants Web site. Starting with awards made in FY2007, HUD established a Grants Performance page that features program performance ratings issued by OMB under its Program Assessment Rating Tool (PART) or its successor tool, for HUD programs that have been evaluated by OMB. HUD will also post all approved Logic Models that show each awardee's projected outputs and outcomes during the period of performance. As required performance reports are received by HUD, they will be added to the Web site. HUD is creating this Web site page to highlight and make available to the public performance and results from HUD-funded programs, in keeping with Executive Order 13392, issued December 14, 2005, and published in the **Federal Register** on December 19, 2005 (70 FR 75373). HUD believes that informing the public on progress is in keeping with presidential and congressional intent for transparency in federally funded programs, as demonstrated by the passage of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), and creation of the federal Web sites *http://www.ExpectMore.gov* and *http://www.Results.gov.*

3. *Return on Investment Statements.* HUD also intends to propose Return on Investment (ROI) Statements for each of its competitive grant programs. Before finalizing ROI Statements for implementation, HUD will either offer incentive funding for applicants wishing to participate in developing an ROI as part of their grant program or HUD will publish the proposed ROI Statements for public comment. HUD believes the applicant/grantee community can greatly assist HUD in its attempt to place a value on the work done under the Department's grant programs. While HUD expects grantees to respond to the Management Evaluation Questions in their final reports, reporting on the ROI Statements is not mandatory at this time. As HUD finalizes ROI Statements for each program, they will be included in awards in the future. In FY2008, HUD offered ROI incentive funding in the Housing for Persons with AIDS (HOPWA) NOFA.

4. *Logic Model Instructions.* The Logic Model form (HUD–96010), a Microsoft Excel workbook, contains instructions in Tab 1 on how to use the form. The form or eLogic Model® incorporates a program-specific master list of statements of need, service, or activity/output(s) and their associated unit(s) of measure; and outcome(s) and their associated unit(s) of measure. Applicants will be required to click on a cell within a column. When you click on the cell, the drop-down button appears to the right of the cell. Applicants can then select the appropriate statement(s) to reflect their proposed program. Applicants can select multiple need(s) and services, or activities/outputs and outcomes, but each selection is entered in separate cells using the drop-down menu. The unit measure, whether for outputs or outcomes, may be a number or date. Applicants insert the expected number of units to be completed or achieved or date of achievement during the period of performance. In this manner, the applicant will build a custom Logic Model reflecting their program of activities. The custom Logic Model will link the need(s) to the activity/output(s), which in turn are linked to the result or expected outcome(s) tailored to each of HUD's programs.

5. *Logic Model Format.* The following briefly describes the format for the HUD Logic Model. Full instructions are contained in the Logic Model found in the Instructions Download for the program, on Grants.gov. For the Logic Model to work properly, you must enable the macros upon opening the file.

a. Each Logic Model has drop-down menus for HUD Strategic Goals and Policy Priorities, to eliminate applicant confusion over what letters and numbers to use for the goals and priorities and to improve data quality.

b. Tabs for Year 1, Year 2, and Year 3 activities, as well as a tab for Total, are provided in each Logic Model. HUD found that applicants within a program had varying opinions or interpretations on time frames for short, intermediate, and long term and that the use of clearly

defined time frames eliminated the varying interpretations and provided for better quality data. In response to grantee requests, in FY2008, HUD added a column labeled YTD (Year-To-Date), which represents cumulative totals per year to each reporting period for results achieved. The column allows grantees to see immediately what they have achieved during the reporting period, what they have achieved as they progress throughout the year, what they have achieved on a cumulative basis each reporting year, and what they have achieved during the period of award. The total tab allows for cumulative projected and final results to be shown covering all years of the period of performance. Applicants with a one-year period of performance only have to complete the Year 1 tab, since the total results will all occur in the one-year award period. When reporting, be sure to show noncumulative data in the past column and cumulative date in the YTD column. In 2008, HUD also increased the number of rows in each Logic Model Worksheet to allow applicants to skip a row between groups of activities so they could better demonstrate the relationship between the activity(ies) and the expected outcomes.

c. For the grantees' convenience and to call attention to the requirements, the Logic Model form contains reporting instructions. The instructions ask applicants to identify in their reports to HUD where actual results deviated from projected results—either positively or negatively. The Reporting Instruction tab includes a text field in which grantees can report any deviations, as well as their responses to the management questions. While the reporting tab does not add additional burden hours to the information collection, HUD believes that having the reporting tab in the form assists the applicant in completing their Logic Model and provides for better quality Logic Models and reporting to HUD. HUD will continue to review data received via eLogic Model® in 2008 and would like to thank the applicant/grantee community for their recommendations and insights.

In FY2009, HUD added fields for the applicant's DUNS number and project location. These data elements make it easier to place logic models on HUD's Web site and find application logic models by location. In FY2009, to provide for greater consistency in reporting, applicants must include all activities and outcomes expected each year of the period of performance. Applicants should carefully review the program NOFA for required outputs and outcome selections, because some of the program NOFAs define what must, at a minimum, be included in the Logic Model.

6. *In FY2009, grantees must adhere to the following reporting principles:*

a. An evaluation process will be part of the ongoing management of the HUD-funded award;

b. Comparisons will be made between projected and actual numbers for outputs and outcomes;

c. Deviations from projected outputs and outcomes will be documented and explained as part of required reporting; and

d. Data will be analyzed to determine the relationship of outputs to outcomes, to determine which outputs produce which outcomes and which are most effective.

As stated above, in FY2007, HUD required each program to establish a set of Program Management Evaluation Questions for grantee reporting. Grantees must use these questions to self-evaluate the management and performance of their program. HUD is continuing this practice in FY2009. In developing the Program Management Evaluation Questions for the Master Logic Model, HUD trained its program managers on the Carter-Richmond Methodology, a critical thinking process that identifies key management and evaluation questions for HUD's programs. The following table identifies the Carter-Richmond generic questions and where the source data is found in the Logic Model.

CARTER-RICHMOND METHODOLOGY: [1] BUILDING BLOCKS FOR EFFECTIVE MANAGEMENT

Management questions	Logic model columns for source data
1. How many clients are you serving?	Service/Activity/Output.
2. How many units were provided?	Service/Activity/Output.
3. Who are you serving?	Service/Activity/Output.
4. What services do you provide?	Service/Activity/Output.
5. What does it cost?	Service/Activity/Output.
6. What does it cost per service delivered?	Service/Activity/Output/Evaluation.
7. What happens to the ''subjects'' as a result of the service? [2]	Outcome.
8. What does it cost per outcome?	Outcome and Evaluation.
9. What is the value of the outcome?	Outcome and Evaluation.
10. What is the return on investment?	Evaluation.

[1] ''The Accountable Agency—How to Evaluate the Effectiveness of Public and Private Programs,'' Reginald Carter, ISBN Number 9780978724924.

[2] The subject can be a client or a unit, such as a building, and is defined in its associated unit of service.

[2] The subject can be a client or a unit, such as a building, and is defined in its associated unit of service.

As a result of this training, each program has developed specific Program Management Evaluation Questions tailored to the statutory purpose of each of their programs. Each program NOFA will require applicants to address these questions based upon the Carter-Richmond Methodology in their reports to HUD. The program NOFA Logic Models will identify the particular questions to be addressed that relate to the statutory purpose and intent of each program. In FY2008, the Management Questions were developed as a Microsoft Excel table which formats the question as a data element and the response to the question as a data element. By creating this table, grantees when reporting can enter the response to the management questions in the data field provided, thus allowing the management question responses to be placed in the Logic Model database for further analysis.

Training on HUD's Logic Model and on the reporting requirements for addressing the Program Management Evaluation Questions will be provided via satellite broadcast. The training will also provide examples of how to construct the Logic Model using the drop-down lists in the eLogic Model®. Training materials and the dates for the training will be on HUD's Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm*. In addition, each program NOFA broadcast will address the specific questions and reporting requirements for the specific program.

Applicants should submit the completed Logic Model as an attachment to their application, in accordance with the directions in the program NOFA for addressing the factors for award. Each program NOFA will identify if it requires the factors for award, including the Logic Model that is required as part of the application submission, to be submitted as a single attached file or as separate files. Please follow the program NOFA directions. When opening the eLogic Model® enable the Macros. Do not convert the file to PDF format. Save the file in the format you opened it. Grants.gov can now accept Microsoft Office 2007 files and HUD can read both Microsoft Office 2003 and Microsoft Office 2007 files.

After being selected for funding and awarded funds, grantees will be required to submit a completed form HUD–96010, Logic Model, indicating results achieved against the proposed output(s) and proposed outcome(s) stated in the grantee's approved application and agreed to by HUD. The Logic Model and required management questions must be submitted to HUD in accordance with the reporting periods identified in each program NOFA for providing reports to HUD.

7. *Use of Form HUD–27061, Race and Ethnic Data Reporting Form, to Report Race and Ethnicity Data for Beneficiaries of HUD Programs.* HUD requires grantees that provide HUD program benefits to individuals or families to report data on the race and ethnicity of those receiving such benefits. Grantees that provide benefits to individuals during the period of performance, whether directly, through subrecipients, or through contractual arrangements, must report the data using form HUD–27061, Race and Ethnic Data Reporting Form, on Grants.gov. The form is a data collection based on the standards published by OMB on August 13, 2002. The individual program NOFAs will identify applicable reporting requirements related to each program. Applicants reporting to HUD using an online system can use that system to meet this requirement, provided that the data elements and reports derived from the system are equivalent to the data collection in the form HUD–27061. For programs where race and ethnicity reporting is required, copies of form HUD–27061 will be included in the Instructions Download portion of the application posted to Grants.gov.

8. *Frequency of Reports and Data Consistency.*

a. *Logic Model Reporting.* When submitting eLogic Model® reports on a quarterly, semiannual, or annual basis, each report should show the results that occurred during that reporting period. All final reports should provide a final eLogic Model® performance for the entire period of the award. See instructions in the eLogic Model® on how to label files when reporting. When reporting, be sure to show noncumulative data in the past column and cumulative data in the YTD column.

b. *Race and Ethnic Data Report.* When submitting the Race and Ethnic Data Reporting Form (HUD–27061) on a quarterly or semiannual basis, each reporting period should show the results that occurred during the performance period for all active clients. If a multiyear program is funded, then each annual report should show results that occurred during that performance year for all active clients. A final form HUD–27061 should show results for all active clients for the entire period of performance.

VII. Agency Contact(s)

The individual program NOFAs will identify the applicable agency contacts related to each program. Questions regarding this notice should be directed to the NOFA Information Center between the hours of 10 a.m. and 6:30 p.m. eastern time at 800–HUD–8929. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339. (These are toll-free numbers.) Questions regarding specific program requirements should be directed to the agency contacts identified in each program NOFA.

VIII. Other Information

A. *Public Law 106–107, Streamlining Activities and Grants.gov.* The Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) directed each federal agency to develop and implement a plan that, among other things, streamlines and simplifies the application, administrative, and reporting procedures for federal financial assistance programs administered by the agency. This law also required the Director of OMB to direct, coordinate, and assist federal agencies in establishing: (1) A common application and reporting system and (2) an interagency process for addressing ways to streamline and simplify federal financial assistance application and administrative procedures, as well as reporting requirements for program applicants. Over the last several years, the intergovernmental work groups tasked with the implementation of Public Law 106–107 have been engaged in various streamlining activities that are now being shared with the grantee community for their input prior to being implemented across the federal government. Public Law 106–107 sunset in 2008. Despite the sunset of the law, federal agencies are still working to simplify and streamline their application and submission requirements. Applicants and grantees are urged to participate in the broadcasts sponsored by the Grants Policy Committee and the federal government work groups to become familiar with the proposed changes to simplify requirements, at *http://www.gpc.gov*.

B. *Grants.gov.* The Grants.gov initiative focuses on allowing the public to easily FIND competitive funding opportunities and then APPLY for grant funding electronically via Grants.gov. In FY2004, HUD posted all of its funding opportunities, with the exception of Continuum of Care, at *http://www.grants.gov/applicants/find_grant_opportunities.jsp* and has continued to do so through FY2009. In addition, Grants.gov is working with federal agencies to begin the process of accepting mandatory and formula grant program plans and application submissions online via Grants.gov. Applicants for HUD's formula and competitive programs are urged to become familiar with the Grants.gov website, registration procedures, and electronic submissions so that, as the website is expanded, applicants will be registered and familiar with the find-and-apply functionality. The Grants.gov Internet address for Finding Grant Opportunities is *http://www.grants.gov/applicants/find_grant_opportunities.jsp*. The Grants.gov Internet address for Applying for Grant Opportunities is *http://www07.grants.gov/applicants/apply_for_grants.jsp*.

C. *HUD–IRS Memorandum of Agreement.* HUD and the IRS have entered into a memorandum of agreement to provide information to HUD grantees serving low-income, disabled, and elderly persons, as well as persons with limited English proficiency, on the availability of low-income housing tax credits, the earned income tax credit, individual development accounts, child tax credits, and the IRS Voluntary Income Tax Assistance program. HUD is making available on its website information on these IRS asset-building resources. HUD encourages you to visit the website and disseminate this information to low-income residents in your community and other organizations that serve low-income residents, so that eligible

individuals can take advantage of these resources.

D. *Paperwork Reduction Act Statement.* The information collection requirements in this notice have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a valid OMB control number. Each program NOFA will identify its applicable OMB control number.

E. *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made for this notice, in accordance with HUD regulations at 24 CFR part 50 that implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). As program NOFAs are issued, each will provide a statement regarding Environmental Impact. The Finding of No Significant Impact for this notice is available for public inspection between 8 a.m. and 5 p.m. eastern time, Monday through Friday, except federal holidays, in the Office of General Counsel, Regulations Division, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

F. Executive Orders and Congressional Intent

1. *Executive Order 13132, Federalism.* Executive Order 13132 prohibits, to the extent practicable and permitted by law, an agency from promulgating policies that have federalism implications and either impose substantial direct compliance costs on state and local governments and are not required by statute, or preempt state law, unless the relevant requirements of Section 6 of the executive order are met. This notice does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order.

2. *American-made Products.* Sections 708 and 709 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, and Independent Agencies Appropriations Act, 2006 (Pub. L. 109–115; approved Nov. 30, 2005), states that, to the greatest extent practicable, all equipment and products purchased with funds made available should be made in the United States.

3. *Eminent Domain.* In accordance with Division K, Title IV (General Provisions), Section 411 of the Consolidated Appropriations Act, 2008 (Pub. L. 110–161, approved December 26, 2007), no funds made available in FY2008 may be used to support any federal, state, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use. This limitation also applied to FY2007 appropriated funds. In FY2009, this limitation may apply, subject to the language in HUD's final approved appropriation act.

Based upon language in previous appropriations, for purposes of this provision, public use shall not be construed to include economic development that primarily benefits private entities.

Further, any use of funds for mass transit, railroad, airport, seaport, or highway projects, as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water-related, and wastewater-related infrastructure), other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfields, as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107–118), shall be considered a public use for purposes of eminent domain.

G. *Public Access, Documentation, and Disclosure.* Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) (42 U.S.C. 3545) and the regulations codified at 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published a notice that also provides information on the implementation of section 102 (57 FR 1942). The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under individual NOFAs published as described below.

1. *Documentation, Public Access, and Disclosure Requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to its FY2009 NOFAs are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 15).

2. *Form HUD–2880, ''Applicant/Recipient Disclosure/Update Report'' (''HUD Applicant Recipient Disclosure Report'' on Grants.gov).* HUD will also make available to the public, for 5 years, all applicant disclosure reports (form HUD–2880) submitted in connection with an FY2009 NOFA. Update reports (also reported on form HUD–2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than 3 years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 5).

3. *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR part 4 provide that HUD will publish a notice in the **Federal Register** to notify the public of all funding decisions made by the Department to provide:

a. Assistance subject to Section 102(a) of the HUD Reform Act; and

b. Assistance provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) noncompetitive basis.

H. *Section 103 of the HUD Reform Act.* HUD's regulations implementing section 103 of the HUD Reform Act, codified at 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are prohibited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics-related questions should contact the HUD Ethics Law Division at 202–708–3815 (this is not a toll-free number). The toll-free TTY number for persons with speech or hearing impairments is 800–877–8339. HUD employees who have specific program questions should contact the appropriate field office counsel or

Headquarters counsel for the program to which the question pertains.

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APPENDIX A

Funding Opportunity Programs Anticipated to Be Available in FY2009

Program	Estimated Time for NOFA Publication
Indian Community Development Block Grant Program	January 2009-February 2009
Healthy Homes Technical Studies	January 2009-February 2009
Housing Counseling	January 2009-February 2009
Housing Counseling Training	January 2009-February 2009
Lead Hazard Control NOFA: Lead-Based Paint Hazard Control Grant Program; Lead Hazard Reduction Demonstration Program	January 2009-February 2009
Rural Housing and Economic Development (RHED)	January 2009-February 2009
Assisted Living Conversion Program (ALCP)	January 2009-March 2009
Brownfields Economic Development Initiative (BEDI)	January 2009-March 2009
Capacity Building Grants *(limited eligibility)*	January 2009-March 2009
Community Development Technical Assistance (CDTA)	January 2009-March 2009
Fair Housing Initiatives Program (FHIP)	January 2009-March 2009
HOPE VI Main Street	January 2009-March 2009
Housing Choice Voucher Family Self-Sufficiency (HCV-FSS) Program Coordinators	January 2009-March 2009
Housing Opportunities for Persons with AIDS (HOPWA)	January 2009 - March 2009

APPENDIX A

Funding Opportunity Programs Anticipated to Be Available in FY2009

Public and Indian Housing Family Self-Sufficiency under ROSS	January 2009 - March 2009
Self-Help Homeownership Opportunity Program (SHOP)	January 2009 - March 2009
Early Doctoral Dissertation/Doctoral Research Dissertation	February 2009 - April 2009
Green and Healthy Housing Technical Studies	February 2009 - April 2009
Healthy Homes Demonstration	February 2009 - April 2009
HOPE VI Revitalization	February 2009 - April 2009
Section 202 Supportive Housing for the Elderly	February 2009 - April 2009
Section 811 Supportive Housing for Persons with Disabilities	February 2009 - April 2009
Alaskan Native/Native Hawaiian Institutions Assisting Communities	March 2009 - May 2009
Hispanic Serving Institutions Assisting Communities (HSIAC)	March 2009 - May 2009
Historically Black Colleges and Universities (HBCU) Program	March 2009 - May 2009
Resident Opportunity and Self-Sufficiency (ROSS) – Service Coordinators Program	March 2009 - May 2009
Section 202 Demonstration Pre-Development Grant Program (DPG)	March 2009 - May 2009
Tribal Colleges and Universities Program (TCUP)	March 2009 - May 2009
Continuum of Care	May 2009 – June 2009

Appendix B
Logic Model Assessment Matrix

Logic Model Assessment Matrix – Selection of Services/Activities and Outcomes and Projections				
	Excellent	Good	Marginally Satisfactory	Unacceptable
Services	Applicant selected services/activities from the drop down list that are consistent with both the NOFA and the Narrative.	Applicant's Narrative identified services/activities consistent with the NOFA, but the drop down list does not contain that service/activity.	Applicant selected services/activities from the drop down list that are inconsistent with the Narrative, *or* did not select available services/activities from the drop down list that are consistent with the Narrative, *or* provided Narrative that is inconsistent with the NOFA.	Applicant did not select available services/activities from the drop down list that are consistent with the Narrative, *and* either the Logic Model is inconsistent with the Narrative or the Narrative is inconsistent with the NOFA.
	3 points	2 points	1 point	0 points
Outcomes	Applicant selected an outcome from the drop down list that is consistent with both the NOFA and the Narrative.	Applicant's Narrative identified an outcome consistent with the NOFA, but the drop down list does not contain that outcome.	Applicant selected an outcome from the drop down list that is inconsistent with the Narrative, *or* did not select an available outcome from the drop down list that is consistent with the Narrative.	Applicant did not select an available outcome from the drop down list *and* either the Logic Model is inconsistent with the Narrative or the Narrative is inconsistent with the NOFA.
	3 points	2 points	1 point	0 points
Projections	Applicant provided realistic projected numbers that are consistent with the Narrative for all services, activities, and outcomes.	Applicant provided projected numbers for most services, activities, and outcomes, *and* 50% or more of the projections are both realistic and consistent with the Narrative.	Applicant provided projected numbers for some services, activities, and outcomes, *and* More than 50% of the projections are not consistent with the Narrative or are not realistic.	Applicant did not provide any projected numbers, *or* All of the projections are not consistent with the Narrative and they are not realistic.
	3 points	2 points	1 point	0 points

Appendix B
Logic Model Assessment Matrix

Logic Model Assessment Matrix – Evaluation Tools			
	Satisfactory	Marginally Satisfactory	Unacceptable
Evaluation Tools	Applicant selected Evaluation Tools that are mostly consistent with the project described in the Logic Model and Narrative.	Applicant selected Evaluation Tools that are mostly inconsistent with either the Logic Model or the Narrative.	Applicant selected Evaluation Tools that are mostly inconsistent with both the Logic Model and Narrative, *or* both the Logic Model and Narrative are inconsistent with the NOFA.
	1 point	0 point	Deduct 1 point
Logic Model Assessment Matrix – Rating Factor Five Narrative			
Align the criteria in Rating Factor Five to the distribution of points in your evaluation plan that you give to reviewers.			

Instructions

A maximum of 10 points are assigned for evaluating and scoring the logic model.

The Logic Model Assessment Matrix identifies the four components that are to be evaluated when scoring the logic model:

- Row—1—Services.
- Row—2—Outcomes.
- Row—3—Projections.
- Row—4—Evaluation Tools.

There are four possible conditions that describe each component represented by the labels (three conditions for the Evaluation component):

- Excellent.
- Good.
- Marginally Satisfactory.
- Unacceptable.

When reviewing and scoring the logic model, HUD reviewers will choose the one statement in each of the four rows (services, outcomes, projections, evaluation tools) that best describes your evaluation of the logic model and add the assigned points to obtain a total score.

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Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, will no longer appear in the Reader Aids section of the Federal Register. This information can be found online at http://www.regulations.gov.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 29, 2008

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Agricultural Marketing Service

Milk in the Northeast and Other Marketing Areas:

Final Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders and Termination of Proceeding; published 12-24-08

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Review of FERC Form Nos. 6 and 6-Q; Notice Terminating Proceeding; published 12-29-08

Wholesale Competition in Regions with Organized Electric Markets; published 10-28-08

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Approval and Promulgation of Air Quality Implementation Plans:

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Virginia; Movement of Richmond and Hampton Roads 8-Hour Ozone Areas from the Nonattainment Area List to the Maintenance Area List; published 10-29-08

West Virginia; Revised Motor Vehicle Emission Budgets for the Parkersburg 8-Hour Ozone Maintenance Area; published 10-30-08

National Volatile Organic Compound Emission Standards for Aerosol Coatings; published 11-7-08

New Mexico; Incorporation by Reference of Approved State Hazardous Waste Management Program; published 10-28-08

Pesticide Management and Disposal; Standards for Pesticide Containers and Containment; published 10-29-08

Revisions to the Definition of Solid Waste; published 10-30-08

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HUD Programs:

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Internal Revenue Service

Disclosure of Return Information to the Bureau of Economic Analysis; published 12-29-08

Employer's Annual Federal Tax Return and Modifications to the Deposit Rules; published 12-29-08

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2008-2009 Crop Year for Tart Cherries; comments due by 1-5-09; published 12-5-08 [FR E8-28769]

AGRICULTURE DEPARTMENT

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COMMERCE DEPARTMENT

International Trade Administration

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National Oceanic and Atmospheric Administration

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 6859/P.L. 110–454

To designate the facility of the United States Postal Service located at 1501 South Slappey Boulevard in Albany, Georgia, as the "Dr. Walter Carl Gordon, Jr. Post Office Building". (Dec. 19, 2008; 122 Stat. 5035)

S.J. Res. 46/P.L. 110–455

Ensuring that the compensation and other

emoluments attached to the office of Secretary of State are those which were in effect on January 1, 2007. (Dec. 19, 2008; 122 Stat. 5036)

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Public Laws Electronic Notification Service (PENS)

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Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Effective January 1, 2009, the CFR Checklist, which appears every Monday in the Reader Aids section of the Federal Register, will no longer be published. This information can be found online at http://bookstore.gpo.gov/.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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63 (63.6580–63.8830)	(869–064–00151–0)	35.00	July 1, 2008
63 (63.8980–End)	(869–064–00152–8)	38.00	July 1, 2008
64–71	(869–064–00153–6)	32.00	July 1, 2008
72–80	(869–064–00154–4)	65.00	July 1, 2008
81–84	(869–064–00155–2)	53.00	July 1, 2008
85–86 (85–86.599–99)	(869–064–00156–1)	64.00	July 1, 2008
86 (86.600–1–End)	(869–064–00157–9)	53.00	July 1, 2008
87–99	(869–064–00158–7)	63.00	July 1, 2008
100–135	(869–064–00159–5)	48.00	July 1, 2008
136–149	(869–064–00160–9)	64.00	July 1, 2008
150–189	(869–064–00161–7)	53.00	July 1, 2008
190–259	(869–064–00162–5)	42.00	July 1, 2008
260–265	(869–064–00163–3)	53.00	July 1, 2008
266–299	(869–064–00164–1)	53.00	July 1, 2008
300–399	(869–064–00165–0)	45.00	July 1, 2008
400–424	(869–064–00166–8)	59.00	July 1, 2008
425–699	(869–064–00167–6)	61.00	[8]July 1, 2008
700–789	(869–064–00168–4)	64.00	July 1, 2008
790–End	(869–064–00169–2)	64.00	July 1, 2008
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–064–00170–6)	27.00	July 1, 2008
101	(869–064–00171–4)	21.00	[8]July 1, 2008
102–200	(869–064–00172–2)	56.00	July 1, 2008
201–End	(869–064–00173–1)	27.00	July 1, 2008
42 Parts:			
1–399	(869–062–00174–6)	61.00	Oct. 1, 2007
400–413	(869–062–00175–4)	32.00	Oct. 1, 2007
414–429	(869–062–00176–2)	32.00	Oct. 1, 2007
430–End	(869–062–00177–1)	64.00	Oct. 1, 2007
43 Parts:			
1–999	(869–062–00178–9)	56.00	Oct. 1, 2007
1000–end	(869–064–00179–0)	65.00	Oct. 1, 2008
44	(869–062–00180–1)	50.00	Oct. 1, 2007
45 Parts:			
1–199	(869–062–00181–9)	60.00	Oct. 1, 2007
200–499	(869–060–00182–7)	34.00	[10]Oct. 1, 2007
500–1199	(869–062–00183–5)	56.00	Oct. 1, 2007
1200–End	(869–062–00184–3)	61.00	Oct. 1, 2007
46 Parts:			
1–40	(869–064–00185–4)	49.00	Oct. 1, 2008
41–69	(869–064–00186–2)	42.00	Oct. 1, 2008
70–89	(869–062–00187–8)	14.00	Oct. 1, 2007
90–139	(869–062–00188–6)	44.00	Oct. 1, 2007
140–155	(869–064–00189–7)	28.00	Oct. 1, 2008
156–165	(869–062–00190–8)	34.00	Oct. 1, 2007
166–199	(869–062–00191–6)	46.00	Oct. 1, 2007
200–499	(869–062–00192–4)	40.00	Oct. 1, 2007
500–End	(869–062–00193–2)	25.00	Oct. 1, 2007
47 Parts:			
0–19	(869–062–00194–1)	61.00	Oct. 1, 2007
20–39	(869–062–00195–9)	46.00	Oct. 1, 2007
40–69	(869–062–00196–7)	40.00	Oct. 1, 2007
70–79	(869–062–00197–5)	61.00	Oct. 1, 2007
80–End	(869–062–00198–3)	61.00	Oct. 1, 2007
48 Chapters:			
1 (Parts 1–51)	(869–062–00199–1)	63.00	Oct. 1, 2007

Title	Stock Number	Price	Revision Date
1 (Parts 52–99)	(869–064–00200–1)	52.00	Oct. 1, 2008
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3–6	(869–064–00202–8)	37.00	Oct. 1, 2008
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15–28	(869–064–00204–4)	50.00	Oct. 1, 2008
29–End	(869–062–00205–0)	47.00	Oct. 1, 2007
49 Parts:			
1–99	(869–062–00206–8)	60.00	Oct. 1, 2007
100–185	(869–062–00207–6)	63.00	Oct. 1, 2007
186–199	(869–062–00208–4)	23.00	Oct. 1, 2007
200–299	(869–064–00209–5)	35.00	Oct. 1, 2008
300–399	(869–062–00210–6)	32.00	Oct. 1, 2007
400–599	(869–062–00211–3)	64.00	Oct. 1, 2007
600–999	(869–062–00212–2)	19.00	Oct. 1, 2007
1000–1199	(869–062–00213–1)	28.00	Oct. 1, 2007
1200–End	(869–062–00214–9)	34.00	Oct. 1, 2007
50 Parts:			
1–16	(869–064–00215–0)	14.00	Oct. 1, 2008
17.1–17.95(b)	(869–062–00216–5)	32.00	Oct. 1, 2007
17.95(c)–end	(869–062–00217–3)	32.00	Oct. 1, 2007
17.96–17.99(h)	(869–062–00218–1)	61.00	Oct. 1, 2007
17.99(i)–end and 17.100–end	(869–062–00219–0)	47.00	[9] Oct. 1, 2007
18–199	(869–062–00220–3)	50.00	Oct. 1, 2007
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660–End	(869–062–00223–8)	31.00	Oct. 1, 2007
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Complete set (one-time mailing)		332.00	2006

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2007. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2007, through July 1, 2008. The CFR volume issued as of July 1, 2007 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2007. The CFR volume issued as of October 1, 2005 should be retained.

[10] No amendments to this volume were promulgated during the period October 1, 2006, through October 1, 2007. The CFR volume issued as of October 1, 2006 should be retained.